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918
No. 2473

United States
Circuit Court of Appeals
For the Ninth Circuit.

UNION STEAMSHIP COMPANY, a Corpora-
tion, Claimant of the American Steamship
"ARGYLL," Her Engines, Boilers, etc.,

Appellant,

vs.

KONSTANT LATZ,

Appellee.

Apostles.

Upon Appeal from the United States District Court
for the Northern District of California,
First Division.

Filed

SEP 21 1914

F. D. Monckton,
Clerk.

United States
Circuit Court of Appeals
For the Ninth Circuit.

UNION STEAMSHIP COMPANY, a Corpora-
tion, Claimant of the American Steamship
"ARGYLL," Her Engines, Boilers, etc.,
Appellant,

vs.

KONSTANT LATZ,
Appellee.

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Upon Appeal from the United States District Court
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First Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States, for the
Northern District of California, First Division,*

IN ADMIRALTY—No. 15,335.

KONSTANT LATZ,

Libelant,

vs.

The American Steamship "ARGYLL," etc., and the
GUALALA STEAMSHIP COMPANY, a
Corporation,

Libelees.

UNION STEAMSHIP COMPANY,

Claimant and Respondent.

Praeceptum for Apostles on Appeal.

To the Clerk of the Above-entitled Court:

Please prepare transcript of record in this cause to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, upon the appeal heretofore perfected in this court, and include in said transcript the following pleadings, proceedings, and papers on file, to wit:

1. All those papers required by section 1 of paragraph 1 of Rule 4 of the Rules of Admiralty of the United States Circuit Court of Appeals for the Ninth Circuit.

2. All the pleadings in said cause, and all the exhibits annexed thereto. [1*]

3. All the testimony and other proofs adduced in the cause, including the testimony taken at the trial, all depositions taken by either party and admitted in evidence, and all exhibits introduced by either

*Page-number appearing at foot of page of original certified Record.

party, said exhibits to be sent up as original exhibits.

4. The opinion and decision of the court.
5. The final decree and notice of appeal.
6. The assignment of errors.

IRA A. CAMPBELL,

McCUTCHEN, OLNEY & WILLARD,

Proctors for Claimant and Appellant.

[Endorsed]: Filed Aug. 25, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [2]

*In the District Court of the United States, for the
Northern District of California, First Division.*

IN ADMIRALTY—No. 15,335.

KONSTANT LATZ,

Libellant,

vs.

The American Steamship "ARGYLE," etc., and the
GUALALA STEAMSHIP COMPANY, a
Corporation,

Libelees.

UNION STEAMSHIP COMPANY,

Claimant and Respondent.

Amended Praecept for Apostles on Appeal.

Please prepare transcript of record on this cause as previously requested, and include therein the opinion of the Court, and all testimony and other proofs adduced and depositions taken by either party in that certain action in the above-entitled court, and entitled therein Gualala Steamship Company vs. The Steamer "Argyle," and bearing No. 15,327, said

action having been consolidated with the within entitled action on said court.

IRA A. CAMPBELL,

McCUTCHEN, OLNEY & WILLARD,

Proctors for Claimant and Appellant.

[Endorsed]: Filed Sep. 2, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [3]

*In the District Court of the United States, in and
for the Northern District of California, First
Division.*

No. 15,335.

KONSTANT LATZ,

Libelant,

vs.

The American Steamship "ARGYLE," Her Boilers,
Engines, Machinery, Tackle, Apparel, and Other
Furniture, and THE GUALALA STEAM-
SHIP COMPANY, a Corporation,

Respondents.

Statement of Clerk U. S. District Court. [4]

PARTIES.

LIBELANT: Konstant Latz,

RESPONDENTS: The American Steamship
"Argyle," her boiler, etc., and The Gualala
Steamship Company, a corporation.

CLAIMANT: Union Steamship Company.

PROCTORS

for

LIBELANT: F. R. Wall, Esquire, San Francisco,
California.

RESPONDENTS: Ira S. Lillick, Esquire, San Francisco, California.

CLAIMANT: Messrs. McCutchen, Olney & Willard, and Ira A. Campbell, Esquire, San Francisco, Calif. [5]

PROCEEDINGS.

1912.

November 8. Filed verified Libel, for damages for personal injuries in the sum of \$5150.00.

Issued Monition for attachment of the Steamer "Argyle," which said Monition was this day returned and filed with the following return of the United States Marshal endorsed thereon: "I hereby certify and return that I received the within Monition on this 8th day of November, 1912, and return the same without service according to instructions from the proctor for the libelant.

C. T. ELLIOTT,

U. S. Marshal,

By Geo. H. Burnham,

Chief Office Deputy.

San Francisco, California, November 8, 1912."

Issued Citation for appearance of Respondent, which Citation was afterwards, on the 12th day of November, 1912, returned and filed with the following return of the United

States Marshal endorsed thereon:
[6] "I have served this writ personally by copy on the Gualala Steamship Company (a corporation), by handing to and leaving said copy with Fred. Linderman, President, of the Gualala Steamship Company (a corporation), at San Francisco, this 11th day of November, A. D. 1912.

C. T. ELLIOTT,

U. S. Marshal.

By J. W. Grover,

Office Deputy Marshal."

Filed Claim of Union Steamship Company.

Filed Stipulation for release of American Steamship "Argyle," in the sum of \$5,500.00, with the National Surety Company, as Surety.

December 12. Filed Answer of Union Steamship Company, a corporation, owners of the Steamship "Argyle."

16. Filed Answer of Gualala Steamship Company, respondent herein.

1913.

August 18. The Court this day ordered that this cause be consolidated for trial, with the cause entitled Gualala Steamship Company, a corporation, vs. The Steamer "Argyle," her engines, etc., No. 15,327. [7]

September 16. The Court this day ordered that this cause be consolidated for trial with causes entitled Gualala Steamship Company vs. American Steamship "Argyle," her engines, etc., No. 15,327; A. W. Beadle vs. American Steamship "Argyle," her engines, etc., No. 15,329; and Aslak Abrahamsen vs. the American Steamship "Argyle," her engines, etc., No. 15,458.

October 15. The above-entitled causes, as consolidated, this day came on for hearing in the District Court of the United States, for the Northern District of California, at the City and County of San Francisco, before the Honorable M. T. Dooling, Judge, and after hearing duly had, were continued until October 16th, 1913, for further hearing on which last day said causes were submitted to the Court for decision.

November 18. The causes as heretofore consolidated were by leave of the Court first had and obtained reopened for a further hearing, before the Honorable M. T. Dooling, Judge of the said Court, and were re-submitted to the Court for decision. [8]

1914.

May 6. The Court this day rendered a written opinion which was filed in cause

No. 15,327, and in which it is ordered that a decree be entered in favor of the libelant for damages, in the sum of \$3,500.00 and costs.

8. Filed Decree.

July 3. Filed Notice of Appeal.

Filed Bond on Appeal in the aggregate sum of \$4250.00, with the National Surety Company, a Surety.

September 2. Filed Assignment of Errors. [9]

In the United States District Court, in and for the Northern District of California, First Division.

IN ADMIRALTY—No. —.

KONSTANT LATZ,

Libelant,

vs.

The Am. Steamship "ARGYLE," etc., and the
GUALALA STEAMSHIP COMPANY, a
Corporation,

Libelees.

Libel for Damages for Personal Injuries—\$5,150.00.

To the Honorable United States District Court, in
and for the Northern District of California,
First Division:

The libel of Konstant Latz, late a seaman on board of the steam schooner "Gualala," against the steamship "Argyle," her boilers, engines, machinery, tackle, apparel and other furniture, and against the Gualala Steamship Company, a corporation, owner

of said steam schooner "Gualala," in a cause of damages for personal injuries and loss of personal effects and belongings, civil and maritime, alleges and articulately propounds as follows:

1. As this libelant is informed and believes and therefore alleges the truth to be:

That at all of the times hereinafter mentioned the steamship "Argyle" was, and now is, a vessel of the United States of America, and that said vessel is now in the Bay of San Francisco, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court; that at all of said times the Gualala Steamship Company was, ever since has been, and now is, a corporation duly organized and existing under and by virtue of the laws of the State of California, with its principal place of business at San Francisco, in said state; that at all of said [10] times said corporation was, ever since has been, and still is, the owner of that certain steam schooner or vessel known as and called "The Gualala."

2. That at all of the times herein mentioned said libelant was in the employ and service of said Gualala Steamship Company and serving as a seaman on board of said steam schooner "Gualala," under a regular contract of shipment with said Gualala Steamship Company so to serve; that on the 15th day of October, 1912, said libelant's left leg was, by a collision between said "Argyle" and said "Gualala," broken between the hip and the knee; that at the time of said collision said libelant was below and asleep in his bunk on said "Gualala," which said

“Gualala” was then and there on the high seas, and does not know how said collision occurred.

3. As this libelant is informed and believes and therefore alleges the truth to be:

That the breaking of said leg by said collision as aforesaid was caused by the negligent, careless and unskillful manner in which said steamship “Argyle” was handled, managed and navigated by her officers and crew; that said Gualala Steamship Company was also in fault and contributed to causing said collision and to the breaking of said leg as aforesaid in that said steam schooner “Gualala” was, also, then and there, handled, managed and navigated in a careless, negligent and unskillful manner by her officers and crew, not including this libelant; that said officers and crew of said “Gualala” were, then and there, officers, agents and servants of said “Gualala” Steamship Company; that each of the officers of said “Gualala” was, then and there, an officer of said Gualala Steamship Company superior to this libelant and a person employed by said Gualala Steamship Company having the right to control and direct the services of said libelant. [11]

4. That by the breaking of said leg as aforesaid said libelant has been rendered sick, sore and lame and has been made to and has suffered great physical and mental pain and anguish; that libelant is informed and believes that said lameness will in all probability be permanent.

5. That by reason of said injuries, received as aforesaid, said libelant has been damaged in the sum of five thousand dollars; that by said collision said

libelant lost all of his personal effects and belongings that were on board of said "Gualala" at the time of said collision; that the reasonable value of said effects and belongings, lost as aforesaid, was the sum of \$150.00, and that libelant has, by the loss of said effects and belongings, been damaged in the further sum of \$150.00.

6. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, this libelant prays that process in due form of law according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said steamship "Argyle," her boilers, machinery, tackle, apparel and other furniture, and that all persons having or pretending to have any right, title or interest in said steamship may be cited to appear and answer, on oath, all and singular, the matters aforesaid; that a monition may, also, duly issue against said Gualala Steamship Company, a corporation, and that said company may be cited to appear and answer, upon oath, all and singular, the matters aforesaid; that this Honorable Court will be pleased to decree to this libelant such sum for damages for his personal injuries and for loss of his effects and belongings as may be just; that the said Gualala Steamship Company may be decreed to pay the same, and that [12] said steamship "Argyle," her boilers, engines, machinery, tackle, apparel and other furniture, may be condemned and sold to pay the same; and that said libelant may have such other and further relief in

the premises as in law and justice he may be entitled to receive.

F. R. WALL,
Proctor for Libelant.

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

Konstant Latz, being first sworn, deposes and says: That he is the person named as libelant in the above and foregoing libel; that he has read said libel and knows the contents thereof, and that the same is true of his own knowledge, save as to those matters therein stated upon his information or belief, and as to those matters that he believes it to be true.

KONSTANT LATZ.

Subscribed and sworn to before me this 7th day of November, 1912.

[Seal] JAMES MASON,
Notary Public, in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Nov. 8, 1912. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [13]

*In the United States District Court, in and for the
Northern District of California, First Division.*

IN ADMIRALTY—No. 15,335.

KONSTANT LATZ,

Libelant,

vs.

The American Steamship "ARGYLE," etc., and
the GUALALA STEAMSHIP COMPANY,
a Corporation,

Libelees.

Claim of Union Steamship Company.

To the Honorable JOHN J. DE HAVEN, Judge of the District Court of the United States, for the Northern District of California:

The claim of Union Steamship Company to the steamship "Argyle," her tackle, apparel, etc., now in the custody, or about to be taken into the custody, of the Marshal of the United States for the said Northern District of California, at the suit of Konstant Latz, alleges:

That it is the true and *bona fide* owner of the said steamship "Argyle," her tackle, apparel, etc., and that no other person is the owner thereof.

Wherefore, this claimant prays that this Honorable Court will be pleased to decree a restitution of the same [14] to it, and otherwise right and justice to administer in the premises.

UNION STEAMSHIP COMPANY.

By W. G. TUBBY,
President.

PAGE, McCUTCHEN, KNIGHT & OLNEY,
Proctors for Claimant.

Northern District of California,—ss.

Subscribed and sworn to before me this 8th day of November, 1912.

[Seal] FRANCIS KRULL,
Deputy Clerk U. S. District Court, Northern District of California.

[Endorsed]: Filed Nov. 8, 1912. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [15]

*In the United States District Court, for the
Northern District of California, First Division.*

IN ADMIRALTY.

KONSTANT LATZ,

Libelant,

vs.

The American Steamship "ARGYLL," etc., and
the GUALALA STEAMSHIP COMPANY,
a Corporation,

Libelees.

UNION STEAMSHIP COMPANY,

Claimant.

Answer of Union Steamship Co.

To the Honorable JOHN J. DE HAVEN, Judge of
the United States District Court, for the North-
ern District of California, First Division.

The answer of Union Steamship Company, a cor-
poration, to the libel of Konstant Latz against the
steamship "Argyle," her boilers, engines, machinery,
tackle, apparel and furniture, in a cause of damages
for personal injuries and loss of personal effects and
belongings, civil and maritime, admits and denies and
alleges as follows:

I.

Claimant admits the allegations of Paragraph I
of said libel. [16]

II.

Answering unto the allegations of Paragraph II
of said libel, claimant admits that a seaman was in-
jured on board said steam schooner "Gualala" dur-

ing a collision between that vessel and the steamship "Argyll," but is ignorant as to the remaining allegations of said paragraph, and for that reason demands that strict proof of the same be made.

III.

Answering unto the allegations of Paragraph III of said libel, claimant denies that the breaking of said leg by said collision was caused by the negligent, or careless, or unskillful, manner in which said steamship "Argyll" was handled, or managed, or navigated, by her officers or crew; and further denies that said steamship "Argyll" was handled, or managed, or navigated, by her officers or crew, in a negligent, or careless, or unskillful manner; it admits, however, that said Gualala Steamship Company was in fault and caused said collision, and the breaking of said leg, in that said steam schooner was then and there handled, managed and navigated in a careless, negligent and unskillful manner by her officers and crew. Claimant is ignorant, however, as to whether libelant was actually participating in said negligent navigation of said steam schooner "Gualala," except that it has been informed that he was not on watch at the time of said collision. [17]

IV.

Answering unto the allegations of Paragraph IV of said libel, claimant admits that by the breaking of said leg, as aforesaid, libelant has been rendered sick, sore, and lame, and has been made to, and has suffered great physical pain; it is ignorant, however, as to whether he has suffered mental pain and anguish, and as to whether said lameness will, in all

probability, be permanent, and for that reason demands that strict proof of the same be made.

V.

Answering unto the allegations of Paragraph V, claimant denies that by reason of said injuries received as aforesaid, libelant has been damaged in the sum of Five Thousand (5,000) Dollars. Claimant admits that by said collision libelant lost all of his personal effects and belongings that were on board said "Gualala" at the time of said collision, but is ignorant as to whether the reasonable value of said effects and belongings, if any so lost, was the sum of One Hundred and Fifty (150) Dollars, and for that reason demands that strict proof of the same be made.

VI.

Answering unto the allegations of Paragraph VI of said libel, claimant denies that all and singular the premises are true, but admits that they are within the admiralty and maritime jurisdiction of the United States, and of this Honorable Court. [18]

VII.

Further answering unto the allegations of said libel, claimant alleges, that at about the hour of 3 A. M. on the 15th day of October, 1912, said steamship "Argyll," without any fault on its part, was in collision with the steam schooner "Gualala" at a point to the southward of Point Arena, on the coast of California, and that said collision was due solely to the negligent navigation of said steam schooner "Gualala" in that while said vessels were approaching each other, starboard to starboard, on practically

parallel courses said steam schooner "Gualala" suddenly changed her course across the bow of said steamship "Argyll"; that said change of course was made by said steam schooner at a time when said vessel was so close to the steamship "Argyll" that said steamship "Argyll" could not avoid said collision, notwithstanding the fact that her helm was immediately thrown hard aport, and her engines reversed full speed astern.

That all and singular the foregoing premises are true.

WHEREFORE, claimant prays that the libel herein may be dismissed with costs, and that claimant may have such other and further relief as shall be meet and equitable in the premises.

UNION STEAMSHIP COMPANY.

By W. G. TUBBY,
President.

IRA A. CAMPBELL,

PAGE, McCUTCHEN, KNIGHT & OLNEY,
Proctors for Claimant. [19]

State of California,

City and County of San Francisco,—ss.

W. G. Tubby, being first duly sworn, on oath, deposes and says:

That he is President of Union Steamship Company, claimant herein of the steamship "Argyll"; that he has read the foregoing answer, knows the contents thereof, and believes the same to be true.

W. G. TUBBY.

Subscribed and sworn to before me this 12th day of December, A. D. 1912.

[Seal]

FLORA HALL,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Dec. 12, 1912. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [20]

In the United States District Court, in and for the Northern District of California, First Division.

IN ADMIRALTY.

KONSTANT LATZ,

Libellant,

vs.

The American Steamship "ARGYLE," etc., and the GUALALA STEAMSHIP COMPANY, a Corporation,

Respondents.

Answer of Respondent, the Gualala Steamship Co.

To the Honorable JOHN J. DE HAVEN, Judge of the District Court of the United States, for the Northern District of California, First Division:

The answer of respondent, The Gualala Steamship Company, owner of the steam schooner "Gualala," to the libel of Konstant Latz, respectfully represents:

I.

Answering unto the first and second articles in said libel, the said respondent admits the same.

II.

Answering unto the third article in said libel, the

said respondent admits that the breaking of said leg of said libelant by said collision, as alleged in said libel, was caused by the negligent, careless and unskillful manner in which said steamship "Argyle" was handled, managed and [21] navigated by her officers and crew, but denies that said Gualala Steamship Company was in any way in fault, or that said Gualala Steamship Company contributed in any way to causing said collision or to the breaking of said leg, as alleged in said libel, or otherwise, either in that said steam schooner "Gualala" was then, or there, or otherwise, handled or managed or navigated in a careless, or negligent, or unskillful manner by either her officers or crew.

III.

The said respondent alleges that the said leg of said libelant was broken while said steam schooner "Gualala" was proceeding on a southeasterly course in the Pacific Ocean about twenty miles southwest of Point Arena, and that said leg of said libelant was so broken by the steamship "Argyle" running into and colliding with said steam schooner "Gualala"; that at the time of, and prior to, said collision said steam schooner "Gualala" was being carefully and cautiously navigated in accordance with the rules and regulations covering the navigation of steam vessels, and that said collision was due to no act, or fault, or neglect on the part of the officers or crew of said steam schooner "Gualala," but was solely due to the careless and negligent navigation of the steamship "Argyle," and particularly so in that when said vessels were about a half a mile

apart, with the masthead or range lights and only the red, or port, light of each vessel visible from the other, said steam schooner "Gualala" blew one blast of her whistle and ported her helm, and said steamship "Argyle" answered said blast by blowing one blast of her whistle but starboarded her helm, instead of putting it to port, and that immediately thereafter notwithstanding that [22] the engines of the "Gualala" were reversed and run full speed astern, said steamship "Argyle" ran into said steam schooner "Gualala" and injured and broke said leg of said libelant.

IV.

Answering unto the fourth and fifth articles in said libel, the said respondent alleges that it is ignorant as to the matters therein alleged, so that it can neither admit nor deny the same, wherefore it calls for proof thereof, if relevant.

V.

Answering unto the sixth article in said libel, the said respondent denies that all or singular, or any, of the premises alleged in said libel are true, except as hereinbefore specifically admitted, but admits that the same are within the admiralty and maritime jurisdiction of the United States and of this Honorable Court, and it denies that any injury, loss, or damage incurred or suffered by said libelant was done, or caused, in, through or by negligence or carelessness, or unskillfulness upon the part of the officers or crew of said steam schooner "Gualala," or any of them, or of any other officer, or agent, or servant, of said Gualala Steamship Company, and

denies that the libelant, by reason of any act or omission of the said respondent, or of any of its officers, or employees, has sustained damage in the sum alleged in said libel, or in any sum.

WHEREFORE, it prays that the said libel be dismissed as to the respondent Gualala Steamship Company, and for its costs incurred herein.

GUALALA STEAMSHIP COMPANY.

By FRED LINDERMAN,

Its President.

L. A. REDMAN,

IRA S. LILLICK,

Proctors for Respondent, Gualala Steamship Company. [23]

Northern District of California,—ss.

Fred Linderman, being duly sworn, says: He is the President of the respondent, Gualala Steamship Company, and is authorized to make this affidavit on its behalf; that he has read the foregoing answer and knows its contents; that it is true as he verily believes.

FRED LINDERMAN.

Subscribed and sworn to before me this 14th day of December, 1912.

[Seal]

LEORA HAIL,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Dec. 16, 1912. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [24]

[Minutes of Court — August 18, 1913 — Order Consolidating Cases and Setting Cases for Trial.

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Monday, the 18th day of August, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable M. T. DOOLING, Judge.

#15,335.

LATZ

vs.

Str. "ARGYLE," etc.

MINUTES—ORDER CONSOLIDATING CASE WITH NO. 15,327.

By the Court ordered that this case be, and the same is hereby, consolidated with case #15,327 against the same claimant for trial and set for trial for October 1, 1913. [25]

[Minutes of Court—September 16, 1913—Order Consolidating Causes for Hearing.]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 16th day of September, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable M. T. DOOLING, Judge.

#15,458.

ASLAK ABRAHAMSEN

vs.

The Am. Steamship "ARGYLE," etc., et al.

MINUTES, ORDER CONSOLIDATING
CAUSES.

The U. S. Marshal having made return to the Monition issued herein that "I hereby certify and return that I received the within writ at San Francisco, California, on August 29th, 1913, and herewith return the same for the reason that a bond was given for the release of said steamship without seizure being made."

On motion of S. T. Hogevoll, Esqr., proclamation was duly made for all persons having anything to say to appear and answer the libel herein, and on motion of Joe McKeon, Esqr., by the Court ordered that claimant of S. S. "Argyle" have ten days to answer the said libel. On motion of Ira S. Lillick, Esqr., Gualala S. S. Co., granted 5 days to answer said libel. Further ordered that this cause be, and the same is hereby, consolidated with causes numbered 15,327, 15,329, 15,335, respectively, for all further proceedings to be had. [26]

[Minutes of Court—October 15, 1913—Trial.]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Wednesday, the 15th day of October,

in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable M. T. DOOLING, Judge.

#15,327, 15,335, 15,458 and 15,329.

THE GUALALA S. S. CO. et al.

vs.

The Am. S. S. "ARGYLE," etc.

MINUTES OF TRIAL.

These causes as consolidated for trial, this day came on for hearing, Ira S. Lillick, Esqr., and L. A. Redman, Esqr., appearing for libelant, The Gualala S. S. Co., F. R. Wall, Esqr., for libelant, K. Latz, S. T. Hogevoll, Esqr., for libelant A. Abrahamsen. Mr. Lillick stated cause and called Fred. Linderman, who was duly sworn and examined as a witness on behalf of the libelant, The Gualala S. S. Co., and read and introduced in evidence depositions taken on behalf of said libelant before a United States Commissioner, and called Louis d'Curtoni and Martin Kalnin, who were each duly sworn and examined as witnesses on behalf of libelant. Libelant introduced certain exhibits which were marked Libelant's Exhibits 1, 2, and 3, respectively.

Mr. Campbell called D. S. McAlpine, who was duly sworn and examined for claimant and introduced in evidence certain exhibits, which were marked Claimant's Exhibits "A" and "B," respectively. The further hearing was thereupon continued until tomorrow. [27]

[Minutes of Court—October 16, 1913—Trial.]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Thursday, the 16th day of October, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable M. T. DOOLING, Judge.

#15,327, 15,329, 15,335, 15,458.

“ARGYLE.”

MINUTES OF TRIAL.

The further hearing of these causes as consolidated was resumed. Mr. Campbell called Richard Dixon, who was duly sworn and examined on behalf of claimant. Mr. Hogevoll called Thos. W. Connolley, who was duly sworn and examined on behalf of libelant Abrahamsen. Mr. Campbell called John Hansen, Andrew Forbosen and Benjamin Sanford, George Curtis, James Dickey, A. F. Pillsbury, David Dickey, Frank E. Ferris, who were each duly sworn and examined as witnesses on behalf of claimant. Mr. Hogevoll called Aslak Abrahamsen, who was duly sworn and examined in his own behalf. Mr. Wall called K. Latz, who was duly sworn and examined in his own behalf. Mr. Lillick called John H. Rinder and Jacob Stack, who were each duly sworn and examined on behalf of libelant, The Gualala S. S. Co., in rebuttal. Aslak Abrahamsen was also recalled. Mr. Campbell recalled Richard

Dixon for further examination. The causes were then submitted to the Court for decision upon briefs to be filed in 10, 10 and 5 days. Claimant introduced exhibits marked "C," "D" and "E." Libellant Abrahamsen introduced an exhibit which was marked "A." [28]

[Minutes of Court—November 18, 1913—Trial.]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 18th day of November, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable M. T. DOOLING, Judge.

#15,327, 15,335, 15,548, 15,329.

"ARGYLE" and "GUALALA."

MINUTES—FURTHER HEARING.

These causes as consolidated this day came on for further hearing. Ira S. Lillick, Esqr., F. R. Wall, Esqr., and Ira A. Campbell, Esqr., appearing. Mr. Lillick called L. Curtis, who was duly sworn and examined. The following exhibits were introduced in evidence. "Beaddle's Ex. marked 4, and Claimant's Exhibit marked "F." The causes were then submitted on briefs to be filed in 10, 10 and 5 days. [29]

**Testimony Taken in Open Court on October 15th, and
16th, 1913.**

[Testimony of Fred. Linderman, for Libelant.]

FRED LINDERMAN called for the libelant, sworn.

Mr. LILLICK.—Q. Where do you reside, Mr. Linderman? A. Alameda, California.

Q. What connection did you have with the Gualala Steamship Company in October, 1912?

A. I was the manager of the company; president of the company and manager.

Q. Who owned the steamer "Gualala"?

A. Gualala Steamship Company.

Q. Who owned the "Gualala" in October, 1912, at the time of this collision?

A. I referred to them, the Gualala Steamship Company.

Q. What was her condition, if you know, on the 14th day of October, 1912, with reference to her being seaworthy?

Mr. CAMPBELL.—I object to the question; I have had no opportunity to examine the witness as to his knowledge of her condition.

The COURT.—You can ascertain if he knew the condition.

Mr. LILLICK.—Q. Will you state what you know about—

The COURT.—(Intg.) Ascertain from him if he knew what her condition was.

Mr. LILLICK.—Q. Do you know what her condi-

(Testimony of Fred Linderman.)

tion was—what condition the “Gualala” was in October, 1912?

A. In October, yes, sir.

Q. What was her condition? A. It was good.

Q. What was the size of the steamer “Gualala”?

A. Her length is 123 feet; breadth, 30.3, I think it is depth, 9½ feet.

Q. Of what construction was she? A. Wood.

Q. How many members of the officers and crew were there [30] on board when she started on her voyage in October?

A. To the best of my remembrance there was 18, all told. That was the crew we usually sail with.

Q. Who were they, that is, naming the positions?

A. The master and two officers, first and second officers, the chief-engineer, first assistant engineer and two firemen, winchman and eight sailors—usually eight sailors, and I think on that occasion we had eight sailors, and a cook and helper.

Q. Was that the usual complement of officers and crew? A. Yes, sir.

Q. When, if you know, did the steamer pass her inspection before the United States Inspectors?

A. On September 21st, 1912.

Q. What was her condition at that time?

A. It was good.

Q. How was she rated by the insurance company?

A. As first class; good. There was no question.

Q. Do you know when she started from West Port?

A. Her port of leaving was Union Landing, not West Port. She left on October 14th, in the evening;

(Testimony of Fred Linderman.)

I think it was Union Landing, October 14th, late in the afternoon about six o'clock.

Q. What, if anything, did she have upon her in the way of cargo?

A. She had a load of tan-bark and railroad ties.

Q. To whom was she bringing them, if you know?

A. Consigned to A. W. Beadle & Company.

Q. What arrangement, if any, was there between the Gualala Steamship Company and A. W. Beadle with reference to carrying this?

A. There was an arrangement to freight at a certain price.

Q. Do you know the condition of the ties and tan-bark when [31*—3†] received on her?

A. I have no knowledge of the condition; I presume they were in good order.

Q. What was the destination of the "Gualala"?

A. San Francisco; San Francisco Bay, I should say, because the tan-bark was going to Redwood City.

Q. Do you know what became of the cargo?

A. Practically all lost, but a few ties were saved.

Cross-examination.

Mr. CAMPBELL.—Q. Mr. Linderman, where were you on the 14th day of October, when this vessel left Union Landing?

A. At the time of her leaving I presume I was, to the best of my recollection, crossing the bay going home; just about the close of day.

*Page-number appearing at foot of page of original certified Record.

†Original page-number appearing at foot of page of Testimony as same appears in Certified Transcript of Record.

(Testimony of Fred Linderman.)

Q. In San Francisco?

A. Yes, sir, either San Francisco or Alameda.

Q. Then, any testimony that you may have given as to the manner that vessel was loaded or the condition of the loading is entirely based upon information furnished you by someone else? A. Yes, sir.

Q. Hearsay, so far as you are concerned?

A. As to the actual loading except to the ties she had on; I know she had ties. There was some left aboard; as to the tan-bark I know nothing about it.

Q. As to how loaded or the quantities or how on board or as to how distributed throughout the vessel or stowed you have no personal knowledge?

A. No, sir.

Mr. LILLICK.—I take it that the amount of cargo and the value and all of the rest of the proof whatever it may be is [32—4] a matter that we can take up before the Commissioner.

Mr. CAMPBELL.—That is my understanding.

Mr. LILLICK.—The case of the libelant, Gualala Steamship Company, to a very large extent is in the depositions of the mate who was in charge of the bridge, the lookout and the quartermaster at the wheel. Those depositions were taken immediately after the collision and I will ask that the depositions be opened and introduced in evidence. Will your Honor follow my reading of the depositions?

The COURT.—Can't they be offered? The Court will have to read them any way.

Mr. LILLICK.—I dislike to take up the time of the Court, but at the same time the story of this col-

(Testimony of Louis d'Curtoni.)

lision and the fault as ultimately will be found is entirely unlinked by it unless we start in with it.

Mr. CAMPBELL.—I agree with Mr. Lillick that the Court will have to hear the depositions.

The COURT.—Very well, if you deem it essential.

Mr. LILLICK.—I will commence with the testimony of Harry Gibbs, the officer on charge at the bridge.

(Pending the conclusion of the reading of the deposition a recess is here taken until 2 P. M.) [33—5]

AFTERNOON SESSION.

(Having concluded the reading of the deposition of Harry Gibbs, deposition of Carlson and Ernest Comsted.)

[Testimony of Louis d'Curtoni, for Libellant.]

LOUIS d'CURTONI, called for the libellant, sworn.

Mr. LILLICK.—Q. What position did you occupy upon the "Gualala" in October, 1912?

A. First assistant engineer.

Q. What time did you go on watch on the morning of October 15th, 1912, do you remember, on the "Gualala"? A. It was midnight on the 16th.

Q. It was midnight on the 15th?

A. It was midnight.

Q. You know that you were in the engine-room on watch at the time of the collision, do you?

A. Yes, sir.

Q. You remember it? A. Yes, sir.

(Testimony of Louis d'Curtoni.)

Q. How long before the impact of the two vessels together was it before you got the signal to reverse your engines full speed astern?

A. About a minute.

Q. Had you had any previous orders from the bridge about your engines? A. Yes, sir.

Q. How long before?

A. About a minute, I should judge.

Q. You mean that you had orders from the bridge about a minute before the collision? A. Yes, sir.

Q. Did you have any other orders besides that at all? A. You mean the signals?

Q. Yes, the signals from the bridge?

A. Yes, sir.

Q. What were they? A. I got one bell.

Q. What does that mean?

A. To stop her. [34—6]

Q. How long after that did you get the bell for full speed reverse? A. About a minute I should judge.

Q. About a minute before the collision?

A. Yes, sir.

Q. Do you know what men were on the deck about the time of the collision, about 3 o'clock that morning?

A. There was no men except the lookout-man and the quartermaster and the mate on watch.

Q. How do you know?

A. I know because they had no business up there at that time.

Q. After the collision did you come upstairs on deck? A. Yes, sir.

(Testimony of Louis d'Curtoni.)

Q. What was the condition of the men who came up, if any came up from the fore-castle-head?

A. The condition of the men?

Q. Yes, as to being dressed?

A. Half undressed; ran aft to lower the boat.

Q. Were you over in Oakland Creek when the "Gualala" was righted and her engines were examined? A. Yes, sir.

Q. How did her engines show those engines to have been going when the vessel stopped?

A. The reversing engines were set full speed astern and locked that way.

Cross-examination.

Mr. CAMPBELL.—Q. What do you mean by locked?

A. There is a lever on the reversing gear you have got to put it on a quadrant and lock it; there is a butterfly thumb-screw on it. When it is down it is in a going ahead motion, and when up a full speed astern.

Q. Is it necessary to lock it in order to be full speed astern? A. Yes, sir. [35—7]

Q. How did you come to lock it this night?

A. We always lock it when working around there.

Q. I understand your testimony to be you reversed her engines a minute before the collision?

A. Yes, sir.

Q. You had stopped the engines a minute before you reversed them? A. Yes, sir.

Q. So you stopped your engines from working ahead two minutes before the collision?

(Testimony of Louis d'Curtoni.)

A. Yes, sir, so far as I could judge.

Q. How many revolutions would your engines turn over while you were running along that night?

A. One hundred and twenty-two.

Q. How much was she making, about 8 knots?

A. Yes, sir, about 8 knots.

Q. What steam pressure were you carrying?

A. One hundred and twenty-eight.

Q. What were the size of your cylinders?

A. About 12 $\frac{1}{2}$ -24.

Q. How large a wheel did she carry, do you know?

A. I could not say what the pitch of her wheel was.

Q. How long had you been engineer aboard of her?

A. About 5 months, I should think.

Q. Did you receive any order from the bridge to stop your engine while you were reversing?

A. I got a stop bell first.

Q. I mean after you stopped to reverse did you ever get a stop bell after that? A. No, sir.

Q. What happened to you when the collision came?

A. After the collision the water came up under the boilers and I thought best to stop the engines and shut off the steam for fear of anybody being thrown over in the water getting cut by the rudder.

Q. You did stop the engines?

A. Yes, sir. [36—8]

Q. What was it that you locked?

A. The reversing gear lever.

Q. How did you stop the engines? A. Throttle.

Q. Did you throw your reversing gear lever to a center position? A. No, sir.

(Testimony of Louis d'Curtoni.)

Q. Don't you usually do so when you stop your engines?

A. Well, some people do and some people don't. If they are all through with the engines after docking her alongside, then we put her in a midship position.

Q. When you are working your engines and you get a reverse order, and then you get a stop order, is it not customary for you to put your reversing gear in the center so that it will be ready to use her either way, to either reverse or go ahead when you get your next order? A. No, sir.

Q. Is it not customary for you to do that?

A. No, sir.

Q. Is not that customary among engineers?

A. Not to put her in mid position.

Q. How long, in your judgment, would it take to bring this vessel to a stop from full speed ahead when you are running 8 knots?

A. About a minute and a half or two minutes.

Q. By reversing full speed astern? A. Yes, sir.

Q. That is to throw her from full speed ahead into a reversing motion? A. Yes, sir.

Q. Did you ever try it? A. Yes, sir.

Q. How long did you find it to take you?

A. I never looked at the clock, maybe a minute and a half to two minutes.

Q. Which do you think it would be in your judgment, a minute and a half or two minutes?

A. About a minute and a half.

Q. That is a great deal of guesswork on your part; did you ever [37—9] time it yourself?

(Testimony of Louis d'Curtoni.)

A. That is about right, about a minute and a half.

Q. How many turns would it take to stop her? How many times would her engines have to turn over in a reverse motion to bring her to a stop?

A. I could not say.

Q. What would your judgment be?

A. I have no idea; I never timed it.

Q. In reversing, you say, she was running along about what number of revolutions? A. 122.

Q. How many revolutions would she make in the first minute after you reversed her from full speed ahead? A. That I could not say.

Q. If running full speed ahead you suddenly threw her into a reversing motion how many revolutions would she turn up in the first minute of reversing?

A. I do not know.

Q. At the time of the collision she was still forging ahead in your judgment? A. That I could not say.

Redirect Examination.

Mr. LILLICK.—Q. I did not understand exactly the situation with respect to the engines being locked, and at the same time running full speed astern. Will you explain that?

A. Why I left her in that position.

The COURT.—He said he locked the reversing gear and then shut off the steam.

The WITNESS.—Yes, sir.

Mr. CAMPBELL.—Q. When the two vessels came together was not your vessel heeled over so quickly that you were thrown?

(Testimony of Louis d'Curtoni.)

A. No, sir, I got a little jar; I was not thrown down altogether.

Q. Did you save your engine-room log-book?

A. No, sir. [38—10]

Q. Did you make any record of your bells?

A. I believe I did, up at the inspector's investigation.

Q. Did you make a memorandum immediately after the accident?

A. Yes, sir, we had to make one immediately afterwards.

Q. That is when you reached port? A. Yes, sir.

Mr. CAMPBELL.—That is all.

[Testimony of Martin Kalnin, for Libellant.]

MARTIN KALNIN, called for libellant, sworn.

Mr. LILLICK.—Q. What position did you occupy on the steamer "Gualala" in October, 1912?

A. First officer.

Q. Were you on the vessel at Union Landing after the cargo of ties and tan-bark were stowed upon her?

A. Yes, sir.

Q. Do you remember how many ties were upon her when she left Union Landing?

A. About 3,000 or 3,100.

Q. Do you remember much tan-bark was on her, how many cords? A. No, sir, I do not.

Q. You remember there was some tan-bark on her?

A. Yes, sir, the rest of the cargo was tan-bark.

Q. How was that cargo stowed?

A. Well, the ties were stowed in the hold level with the rails.

(Testimony of Martin Kalnin.)

Q. And the tan-bark?

A. The tan-bark was stowed crossways, a kind of pitch, about twelve or sixteen inch pitch.

Q. Where were you, mate, on the morning at the time of the collision between the "Gualala" and another vessel? A. I was in my berth.

Q. What did you do immediately, after the impact?

A. As soon as the "Argyle" hit us I jumped out and ran up on deck and got the boat over. [39—11]

Q. Do you know who was on the deck of the "Gualala" at the time of the collision?

A. You mean on the bridge?

Q. Yes, on the bridge, lookout?

A. The second mate was on the bridge. I do not remember the names of who was on the lookout or at the wheel.

Q. Do *you* *whether* there was anyone on deck that morning except the officer on the bridge, the lookout and the quartermaster at the wheel?

A. I do not know anything about that except the second mate; that is all I can remember.

Q. I mean, do you know whether there was anyone else on the deck of the vessel that night except those three men? A. That I could not tell.

Cross-examination.

Mr. CAMPBELL.—Q. You were chief officer of this vessel?

A. Yes, sir.

Q. As such you participated in her navigation from time to time? You had charge of navigating her during your watch? A. Yes, sir.

(Testimony of Martin Kalnin.)

Q. How long have you been in her?

A. I was there about three months.

Q. During that three months you had stood watch and watch with the second officer? A. Yes, sir.

Q. Within what distance would she turn completely around when running full speed ahead, say 8 knots, with her helm suddenly thrown hard aport?

A. I could not tell you exactly how fast she would go. It all depends how fast you throw her wheel over.

Q. Assume she was going ahead in smooth water at 8 knots per hour and you suddenly threw her helm over hard aport. Within [40—12] how much of a circle would she turn around? What would the diameter of the circle be?

A. It would be about one-eighth of a mile.

Q. How many times her length would that be?

A. I could not tell you.

Q. How long would it take her to do that?

A. I don't know. I never tried it.

Q. What would your judgment be?

A. I could not very well tell.

Q. Suppose you were running along—can't you give me your best judgment as to how long it would take to do that? A. No, sir.

Q. It would take about 4 minutes, would it not?

A. I could not tell you.

Q. Assume that you were running along in smooth water at 8 knots per hour and you ported your helm and continued putting it over until it was hard aport, how long would *would* it take the "Gualala" to turn

(Testimony of Martin Kalnin.)

six points on her course?

A. With the wheel hard aport?

Q. When you start to put your wheel over to port and keep putting it over until it is hard aport?

A. You said about four points?

Q. Six points?

A. It takes about one-half a minute.

Q. It takes about one-half a minute?

A. Or more.

Q. Why did you add or more?

A. Because I never tried it exactly.

Q. What would your judgment be, one-half a minute? A. One-half a minute or more.

Q. How much more?

A. It might be three-fourths of a minute with hard aport.

Q. You would say between one-half and three-fourths of a minute?

A. Yes, sir, with the wheel hard aport. [41—13]

Q. Assume you are running along and you port your wheel and keep putting it over until it is hard aport, how long a time would it take you to turn six points? A. It takes longer than that.

Q. How much?

A. Two minutes; it is a slow wheel.

Q. How long would it take her to turn around?

A. I do not know, I never tried it.

Q. How long would it take her under aport helm, how long would it take her to turn a point and a half at that course when going ahead at full speed at 8 knots?

(Testimony of Martin Kalnin.)

A. I do not know; I never took any notice of it.

Q. She was a steam schooner, was she not?

A. Yes, sir.

Q. Steer well? A. Steer well.

Q. Turn quickly on her helm?

A. It all depends how you put the wheel. If you put the wheel hard over it went medium; if you did it slowly it went slowly.

Q. If you put your helm hard over it would swing quickly? A. Not so very quick.

Q. Would you say she was a slow moving vessel or was she quick in response to her helm?

A. It all depends how much wheel you give her.

Q. Supposing you put your wheel hard over, would she quickly respond to that hard over wheel?

A. Yes, sir, quickly. I could not tell how long it would take to go one point.

Q. Would the vessel turn quickly to a hard over helm? A. Not very quickly.

Q. How did she compare in answering her helm with other vessels of the same type?

A. I do not know.

Q. You have been in other steam schooners, have you not? A. Yes, sir. [42—14]

Q. Did she respond to her helm as well as other vessels did? A. All alike.

Q. The larger the vessel the slower they are, or the larger the quicker?

A. The larger the vessel, they swing slower.

Q. And it would take a larger vessel longer to turn under a hard aport helm through six points than it

(Testimony of Martin Kalnin.)

would a smaller vessel?

A. I do not know; it all depends on the kind of steering gear you have got.

Q. When your helm is over to hard aport it would take a larger vessel a longer time to swing six points than a smaller vessel, would it not? A. Yes, sir.

Q. That is true, is it not? A. Yes, sir.

Redirect Examination.

Mr. LILLICK.—Q. That is not true when the large vessel has steam-steering gear and the small vessel hand-steering gear? A. Yes, sir.

Mr. CAMPBELL.—I would like to have the witness testify and not counsel.

Mr. LILLICK.—I withdraw it.

Q. It is a fact, is it not, that there is a great difference in respect to how quickly a vessel will answer her steering gear as to whether the steering gear is a hand-steering gear or a steam-steering gear?

A. A steam-steering gear is quicker.

Mr. CAMPBELL.—Q. The difference between a steam-steering gear and a hand-steering gear is simply in the time within which the rudder can be put over? A. Yes, sir.

Q. From the time you get your rudder over to a hard-over position, whether it is put over by a steam-steering gear or a hand-steering [43—15] gear, a small vessel will respond to that *rudder than* a larger vessel?

A. It all depends upon how fast you put it over.

Q. After it is once over, I say? A. Yes, sir.

Mr. WALL.—Q. I understand you to say that you

(Testimony of Martin Kalnin.)

had never swung or never saw her swing completely around in a circle; is that correct? You had never seen anybody put her helm over hard or swing all the way around?

A. I have seen them. I never took any time how long it takes.

Q. Your estimate of the time it takes is simply a guess on your part; is that not the fact?

A. Yes, sir.

Q. You never saw anybody take an estimate of the time it would take her to swing through six points, have you? A. No, sir.

Q. It is merely a guess on your part how long that would take? A. Yes, sir.

Q. And the time it would take her, of course, would depend upon how much helm she was given and how quickly it was given? A. Yes.

Q. The vessel that is loaded—when she is loaded what effect would that have on the “Gualala’s” helm, if anything, would it move quicker or slower?

A. Slower.

Mr. CAMPBELL.—Q. It would have the same effect upon a larger vessel would it not?

A. Yes, sir.

[**Testimony of Fred Linderman, for Libelant
(Recalled).**]

FRED LINDERMAN, recalled.

Mr. LILLICK.—Q. I hand you four photographs and ask you what they represent.

A. They represent the steamer “Gualala” in her damaged condition when she was hauled out on the

(Testimony of Fred Linderman.)

land located at Alameda Point. [44—16]

Q. What is her condition with respect to representing her condition after this collision? Have any repairs been made upon her? A. They have now.

Q. At the time the pictures were taken?

A. At this time nothing was done. They were just starting work to repair her.

Q. Mr. LILLICK.—If you have no objection, Mr. Campbell, I will offer these in evidence and ask that they be marked Libellant's Beadle Exhibit 1.

(The photographs are marked, "Libellant's Beadle Exhibit 1.")

Cross-examination.

Mr. CAMPBELL.—Q. I hand you this photograph and ask you whether you can identify that as a photograph of her as she lay alongside of the dock when she was being turned over? A. Yes.

Q. I hand you another one and ask you if you can identify that also?

A. Yes, sir. That is one of her in her damaged condition lying on the side.

Mr. CAMPBELL.—I will offer these also, Mr. Lillick, and ask that they be marked Claimant's Exhibit "A."

(The photographs are marked Claimant's Exhibit "A.")

Mr. LILLICK.—That is our case with the exception of one witness, and Mr. Campbell as well as Mr. Wall and Mr. Hogevoil have kindly consented, if the Court is willing, that the testimony of this witness can be taken as soon as he returns. It is Captain

Curtis, and he was called out of town to go down to San Pedro to raise a dredger that sank there, and I do not feel that we can ask him up. With the permission of the Court we will rest with the exception of taking his testimony.

Mr. CAMPBELL.—Before you rest I should like to inquire as [45—17] to whether or not you are going to produce the master of your vessel as a witness, so that we can have an opportunity of examining him.

Mr. LILLICK.—It is not necessary. The captain was below. The reason I have introduced the testimony that I introduced this morning and this afternoon with respect to the officer on the bridge was to show the men who were on deck at the time of the collision, and for the purpose of showing the captain would not know anything about it.

Mr. CAMPBELL.—When you took these depositions of the other officers the master was here at that time?

Mr. LILLICK.—Yes.

Mr. CAMPBELL.—He was master of the vessel. We, of course, expected you would produce him as a witness here at this time. Have you made any effort to locate him?

Mr. LILLICK.—It is not necessary. It is not proper for you to call upon me to produce the captain. The captain of this vessel was below, and he came on deck as we heard this morning at the moment of impact or immediately afterwards; that is the reason I did not call him.

(Testimony of D. S. McAlpine.)

Mr. CAMPBELL.—We most certainly expected him to be here; it is the usual course in Admiralty collision cases to produce as a witness the master of your own vessel.

Mr. LILLICK.—For what purpose?

Mr. CAMPBELL.—One of the questions I wanted to ask him was about the turning power of your vessel. That is one of the questions we proposed and desired to ask him.

The COURT.—Has anybody else any evidence to offer? [46—18]

[Testimony of D. S. McAlpine, for Claimant.]

D. S. McALPINE, called for the claimant, sworn.

Mr. CAMPBELL.—Q. How old are you, Mr. McAlpine? A. Approximately 38 years old.

Q. What is your business?

A. Ship's officer or seafaring man.

Q. What papers do you hold? A. Chief mate.

Q. Of what class of vessel?

A. All ocean; unlimited tonnage.

Q. Were you on board the "Argyle" at the time of her collision with the "Gualala"? A. Yes, sir.

Q. What was your position? A. Third officer.

Q. How long had you been on board the "Argyle" prior to that time?

A. From the beginning of the month.

Q. From the beginning of the month?

A. Yes, sir.

Q. How long have you held officer's papers?

A. Oh, some four years.

Q. Were you the officer in charge of the bridge at

(Testimony of D. S. McAlpine.)

the time of the collision? A. Yes, sir.

Q. At what time did it take place, approximately?

A. Shortly after 3 A. M.

Q. Will you state to the Court the circumstances which led up to the collision? State just how the collision took place.

A. The lookout-man called my attention to a light which he reported on the starboard bow. He reported a green light, which is a vessel's starboard light, and I saw it at the same instant that he reported it.

Q. You saw it at about the same time he reported it? A. At the same instant he reported it.

Q. How did it bear on your starboard bow?

A. About a point and a half on the starboard bow.

Q. Where were you standing at the time?

A. On the starboard side [47—19] of the bridge.

Mr. CAMPBELL.—I have a photograph which I can identify of the "Argyle" and I will offer it in evidence as Claimant's Exhibit "B."

(The photograph is marked Claimant's Exhibit "B.")

Q. Is this a photograph of the steamer "Argyle"?

A. Yes, sir.

Q. And you were standing where?

A. On the starboard side of the bridge.

Q. Can you indicate it with a pencil?

A. Yes, sir.

Q. Will you mark with a pencil on the photograph the figure 1, drawing a straight line up from your

(Testimony of D. S. McAlpine.)

position on the bridge? A. Yes, sir.

Q. Mark it figure 1? A. Yes, sir.

Q. Where is the telegraph located on the bridge?

A. Here (pointing).

Q. Where was it located with reference to your position?

A. I was standing right by it; my hand was on the telegraph at the time.

Q. What do you mean by the telegraph, the instrument on the bridge by which you communicate with the engine-room?

A. Yes, sir, the engine-room telegraph.

Q. How far on your starboard bow did you judge this green light to be when it was reported to you, and you saw it on that night? A. How far?

Q. What was the bearing on your starboard bow?

A. A point and a half.

Q. Go ahead with your story of the collision from that time on.

A. Well, I took two or three turns up and down the bridge. He was in a safe position—there was no need of altering our course to clear him; he was well clear on the starboard bow; shortly after he blew one whistle and ported his helm, and then I saw his red [48—20] light which indicated to me he was then crossing my bow. In the interval between the time the light was reported and the time he blew the one whistle, of course we came in closer position. There was then no time for me to do anything else than answer his one whistle and port my helm and try to clear him; he was swinging his helm, turning

(Testimony of D. S. McAlpine.)

to the right and crossing my bow; at the same time upon him turning to the right I ported the vessel to a parallel position, had there been space enough, there was not; the consequence was we struck him a little on his port bow.

Q. When he blew his one whistle and showed you his red light as you have testified, what did you do with your helm?

A. I immediately altered my helm hard aport and at the same time rang the engine-room telegraph, full speed astern and blew him three whistles to indicate I had done so.

Q. Did you give him any whistle to indicate you had ported your helm?

A. Yes, sir, I answered his one whistle; that indicated I had ported my helm.

Q. Which way did the porting of your helm swing your bow? A. To the right.

Q. How far off would you say that the "Gualala" was at the time she blew the one whistle and showed her red light? A. About three ship's lengths.

Q. By ship's lengths, yours or hers?

A. I had judged from ours, not his. I did not know the dimensions of his vessel at the time.

Q. How long was the "Argyle"?

A. Approximately 300 feet.

Q. What speed were you making that night?

A. 8 knots by log.

Q. How was the weather?

A. Clear, smooth. [49—21]

Q. How was the sea and the wind?

(Testimony of D. S. McAlpine.)

A. Scarcely any wind; small westerly swell, small northwesterly swell, smooth water.

Q. If when you received his one whistle and saw his red light, you had continued straight ahead or stopping your vessel, will you state whether or not in your judgment there would have been a collision?

A. Yes, sir, there would have been a collision but he would have struck us.

Q. Will you state whether or not in your judgment if upon receiving his one whistle and seeing his red light you had reversed your engines, keeping your helm as it was before you altered it to port, whether or not under those circumstances, there would have been a collision?

A. Yes, sir, he would have struck us.

Q. Will you state whether or not in your judgment, if you had starboarded your helm and either gone full speed ahead or full speed astern under such starboard helm there would have been a collision?

A. Well, I am not prepared to state positively whether there would have been a collision, but the probability is he would have struck us; in all probability he would have struck us.

Q. What was your vessel loaded with?

A. Gasoline, distillate and kerosene.

Q. What in your judgment would have been the result if he had struck your vessel either while you were continuing straight on your course at regular speed or under a reversing engine and had penetrated the hull of your vessel?

A. There would have been an explosion, no doubt,

(Testimony of D. S. McAlpine.)

whatever; the concussion would have caused an explosion.

Q. In what manner is your vessel constructed for the carriage of [50—22] gasoline?

A. It has tanks built for the purpose.

Q. That is, the vessel is divided off in compartments by bulkheads? A. Yes, sir.

Q. Does the gasoline in the tank rest directly against the plating of the vessel?

A. Against the side of the vessel.

Q. On the sides? A. Yes, sir.

Q. If the plating of the vessel had been punctured would there have been anything to prevent the escaping of gasoline onto the surface of the water?

A. No, sir, there would have been nothing to prevent it from overflowing onto the water.

Q. It has been testified in this case that the "Argyle" had changed her course to port and struck the "Gualala" nearly head-on at a time when the "Gualala" had changed six points in her course, the two vessels traveling towards each other directly head and head; I will ask you whether or not it is true that you starboarded your helm?

A. No, sir.

Q. Will you state whether or not at any time subsequent to the receipt of the one whistle from the "Gualala" the head of your vessel was ever turned to port?

A. She may have swung in the course to port half a point, or a quarter of a point, but it was never *was* turned to port.

(Testimony of D. S. McAlpine.)

Q. Was her helm ever ordered by you to starboard so as to swing it to port? A. No, sir.

Q. At the time of the impact did your vessel still have headway?

A. Yes, sir, she must have had a little headway, yes; considerable headway.

Q. How does the "Argyle" respond to her helm?

A. Very well.

Q. When she is in a loaded condition how does she respond to her [51—23] helm?

A. Rather sluggishly.

Q. At what angle did you strike the "Gualala"?

A. She was crossing our bow, and we struck her this way (indicating).

Q. What was the angle at which the two vessels came together? A. Head and head.

Q. I will ask you, Mr. McAlpine, whether or not in your judgment if the "Gualala" travelling on a southeast course was changed from that course by porting her helm followed by a hard aport helm so as to bring her on a south southwest course, as indicated by figure A, whether in the time that she was changing from a southeast course to a south southwest course, it would have been possible for you to have changed the course of the "Argyle" to port so as to bring her around and meet the "Gualala" head-on when she was heading south southwest?

A. Not possible; we should have to make almost an S to do so.

Q. How far off do you judge that the "Gualala"

(Testimony of D. S. McAlpine.)

would have passed you to starboard had there been no alteration in the course of either vessel?

A. Over 600 feet.

Q. What would you say that to be in ship-lengths?

A. About two of our ship-lengths, or more possible she would have passed three ship-lengths.

Q. Now, I want to show you the bridge log and ask you on the date of October 15th and ask you to read from the bridge log that portion on the upper half of the right-hand page under date of October 15th which appears in your handwriting, if any of it does so appear?

A. 259 lookout man reported green light on starboard bow two points, lowered boat, picked crew of "Gualala." Weather clear and hazy, light NW. breeze, smooth sea, that is all I can see. [52—24]

Q. In whose handwriting does the entry, Altered course one-half point to port, received one whistle from vessel; whose handwriting is the 3.07 collided with the "Gualala"?

A. That is the second mate; it is not mine, anyhow.

Q. Is the rest of the page in your handwriting there?

A. Weather clear and hazy, light NW. breeze, smooth sea; that is in my handwriting.

Q. In whose handwriting is 3.05, reversed engines full astern?

A. That is on the left-hand side of the page.

Q. Will you state whether or not you saw the "Gualala's" red light at any time prior to the receipt from her of her one whistle? A. No, sir.

(Testimony of D. S. McAlpine.)

Q. How soon after receipt of that whistle did you see the red light? A. Almost immediately.

Q. Was there anything in your judgment, Mr. McAlpine, which could have been done that was not done to have avoided that collision?

A. No, sir, all possible was done to avoid the collision.

The COURT.—Q. You mean by your ship?

A. By our ship, your Honor.

Q. Are you speaking of both vessels now?

A. No, sir, only of the “Argyle”; I know nothing whatever of the circumstances of the other boat.

Cross-examination.

Mr. LILLICK.—Q. Mr. McAlpine, what time was it when you first saw the lights of the “Gualala”?

A. Very shortly before 3 o’clock in the morning.

Q. What light did you see first?

A. I saw both her starboard light and her mast-head light when it was reported to me. [53—25]

Q. Didn’t I understand you to testify a moment ago that the lookout-man reported a green light on your starboard bow, a point and a half off your bow?

A. Yes, sir.

Q. That is what he reported? A. Yes, sir.

Q. And then you looked and saw a green light, a masthead light? A. Yes, sir.

Q. That was the first you saw of the “Gualala”?

A. Yes, sir.

Q. How far away do you think she was then?

A. She was then about inside of a mile.

(Testimony of D. S. McAlpine.)

Q. Inside of a mile? A. Yes, sir.

Q. How long after that was it before you received that one whistle from her?

A. Oh, I suppose about a minute and a half or two minutes.

Q. A minute and a half or two minutes?

A. Yes, sir.

Q. And after receiving that one whistle you blew an answer to his signal one whistle?

A. I saw his red light and then I blew my one whistle.

Q. That was answering his one whistle?

A. Yes, sir.

Q. Indicating that he was going to your port?

A. No, sir, indicating that I was going to port my helm.

Q. Not indicating that he was going to port his helm?

A. What have I got to do with his helm; he had already ported by showing his red light.

Q. You understood when you saw his red light he had ported his helm?

A. Yes, sir, of course, indicated *indicated* by his signal of one whistle.

Q. You mean when you got his whistle that you understood he had already changed his course to starboard? A. Yes, sir.

Q. And that is what you thought he meant?

A. Yes, sir, he had [54—26] done so.

Q. And you answered the one whistle and you ported your helm? A. Yes, sir.

(Testimony of D. S. McAlpine.)

Q. And went to starboard? A. Yes, sir.

Q. As I understand, that is a minute and a half after you had first seen his light? A. Yes, sir.

Q. About a minute and a half?

A. As to the seconds of time, I cannot positively state that it was a minute and a half.

Q. How long do you say?

A. Approximately a minute and a half.

Q. Then, as you remember your testimony, it was almost immediately after that or at the same time you saw his red light coming up? A. Yes, sir.

Q. And at that time the two vessels were about two ship lengths apart? A. Yes, sir.

Q. How long after was it you received that one whistle from him and you answered it, until the two boats came together?

A. About two minutes and a half or so.

Q. About two minutes and a half?

A. Possibly so.

Q. Then they were within nine hundred feet of each other and maneuvering about two minutes and a half from the time you answered his whistle until the two boats came together? Is that your recollection?

A. I say the time was only about two minutes and a half. You cannot stand on a ship's bridge with a stop-watch in your hand.

Q. You think it was longer?

A. No, sir, I do not think it was.

Q. You do not think it was longer from the time of the answering signal you gave the "Gualala" up to the time of the impact than from the time you

(Testimony of D. S. McAlpine.)

first saw his light and whistle?

A. No, sir, it was not longer.

Q. Was it shorter?

A. It might have been longer. [55—27]

Q. You say it was a minute and a half from the time you first saw the light of the "Gualala" and received this signal from the "Gualala"?

A. Yes, sir.

Q. And after that it was about two minutes and a half from that time until the two boats came together? A. Yes, sir.

Q. Then it was longer between the time you answered the whistle and the impact than between the time you first saw his light and the whistle was given?

A. It may not have been; it appeared longer; it might not have been; it might have been shorter.

Q. What do you think?

A. It is about the same time or a little shorter.

Q. Do I understand you to testify when you first saw these lights on the "Gualala" you thought it was a mile away? A. Yes, sir.

Q. You remember testifying before the United States Inspectors when you first saw the light on the "Gualala" she appeared to you to be three miles away?

A. I do not remember now what I said then.

Q. You do not know that you said that?

A. I might have.

Q. Do you remember testifying before the United States Inspectors and being questioned upon that examination by Mr. Lillick as follows:

(Testimony of D. S. McAlpine.)

“Q. Were you watching the lights on the ‘Gualala’ after she first showed up?

“A. Yes, sir, I watched them; we were well clear.

“Q. How many points was she off your star-board bow when you first saw her?

“A. About one and a half to 2 points.

“Q. How far away?

“A. About 3 miles.” [56—28]

Do you remember that testimony? A. Yes, sir.

Q. You do remember it?

A. No, sir, I cannot say I remember it; it is some considerable time ago, but if that is there that is my testimony.

Q. What would you be disposed to believe now, the testimony you gave before the inspectors or the testimony you gave here in court?

A. I do not say she was three miles.

Q. Which is true?

A. If I said it was three miles it might have been three miles; it might have been two miles. I say one mile and a half now,—a mile and a half is what I said now.

Q. What is true, the testimony you gave before the inspectors as being three miles when you first saw her light or your testimony you give now, that she was a mile away when you first saw her light?

A. The distances are only approximate distances.

Q. Is it not a fact that perhaps the facts about this collision were more clear at the time the testimony was taken before the inspectors?

(Testimony of D. S. McAlpine.)

A. At that time they were probably more clear than now.

Q. Then, perhaps you think it is more nearly the true distance of her being three miles away than what your testimony indicates now of one mile away; what do you think?

A. I think it was nearer three miles. I think it was much nearer than three miles.

Q. You think nearer than three miles?

A. Yes, sir.

Q. Then you do not think your testimony before the inspectors was correct as to that?

A. No, sir, I think I was a little wrong on distances.

Q. Do you remember the date this testimony was given before the inspectors?

A. Not accurately. [57—29]

Q. It was given in 1912, was it not, November 27th, 1912? A. Somewhere around there.

Q. That was about a month and a half after the collision? A. Yes, sir.

Q. Is it not probable that your testimony is more nearly correct then than your testimony here to-day. The facts were more clear in your mind at that time than they are now?

A. I could not say so; I remember it then as I do now.

Q. How many minutes do you think it was from the time you first saw the lights on the "Gualala" until the moment of the impact?

A. About five or six minutes.

Q. And during those five or six minutes the two

(Testimony of D. S. McAlpine.)

vessels were approaching each other at the rate of 8 knots an hour; you were running 8 knots an hour?

A. Yes, sir.

Q. And the whistle of the "Gualala" and the whistle of the "Argyle," the passing signals, were exchanged when the two vessels were about 900 feet apart; do you still believe that? A. Yes, sir.

Q. That is your testimony?

A. They may have been nearer.

Q. What were you doing between the time the lights were first reported to you and the time of the first whistle that you heard from the "Gualala" with respect to watching her, were you watching her?

A. I saw her several times; she was in the same position, coming the same way; my attention was called when she blew the one whistle.

Q. Was there any change in her bearing as to a point and a half off your starboard bow between the time you first saw her until the time that whistle was heard from her?

A. There was a slight alteration in the bearing.
[58—30]

Q. Which way?

A. Coming towards us, passing us.

Q. How many points do you suppose she changed? What is your best recollection now, from the time you first saw her until that first whistle?

A. About half a point.

Q. Do you mean two points or a point?

A. About half a point.

(Testimony of D. S. McAlpine.)

Q. She changed to starboard about half a point to make two points off the starboard bow?

A. No, sir, the two vessels coming together parallel in that manner, as they come closer the compass bearing alters.

Q. As I understand you, when you first saw her she was about a point and a half off the starboard bow?

Mr. CAMPBELL.—He testified that when the green light was reported it was reported a point and a half off the starboard bow.

Mr. LILLICK.—That was when he first saw her.

Q. Then, as I understand, she kept on coming towards you and you coming towards her, a minute and a half after that approximately you heard one blast of her whistle? A. Yes, sir.

Q. How much did her bearing change?

A. It was still two points on the starboard bow.

Q. In other words, coming up towards you still on her starboard bow? A. Yes, sir.

Q. And she had only changed her bearing one-half point during that time? A. Yes, sir.

Q. And when one whistle blew you suddenly noticed the red light. When you had been looking at her had the red light been showing before that time? A. No, sir.

Q. In the meantime, between the time you saw her and when your attention was called to her again she had changed her course? [59—31]

A. Yes, sir.

Q. You only know that when the whistle was blown

(Testimony of D. S. McAlpine.)

by her you looked up and saw then for the first time the red light? A. Yes, sir.

Q. How many times had you looked at the "Gualala" between the time you first saw her and this passing signal that you received from her?

A. Every time I crossed the bridge.

Q. How many times did you cross the bridge?

A. The bridge is about 40 feet wide or thereabouts; every time I would walk up to one side I would see her lights.

Q. What else had you seen on her from the time you first saw the masthead light and the green light up to when this whistle was blown?

A. I saw her masthead light and her green light, and then I saw the red light.

Q. When did the red light come up?

A. Immediately after blowing the whistle.

Q. I understand you to say you looked at her every time you came over on the end of the bridge?

A. Yes, sir.

Q. And you had not noticed the red light until the whistle was blown, and then you saw her red light was showing? A. Yes, sir.

Q. That is the first time you saw it?

A. Yes, sir.

Q. Do you remember testifying before the inspectors that when you first saw the "Gualala," when the lookout reported her she was perhaps one-half a mile away; do you remember testifying that way?

Mr. CAMPBELL.—I think you ought to read the questions and answers as they are recorded if you

(Testimony of D. S. McAlpine.)

are going to examine him on his testimony before the inspectors.

Mr. LILLICK.—I will be glad to. [60—32]

The COURT.—Where is this other testimony?

Mr. LILLICK.—At the bottom of page 6.

Q. Do you remember this testimony upon your examination by me?

“Q. How far away was she when you first saw her, when the lookout reported her?

“A. Perhaps half a mile.”

Do you remember that testimony?

A. I could not say I do.

Q. You were under oath there?

A. I was on oath there and I am on oath here.

Q. You testified when the lookout reported her to you she was half a mile; and another time you testified she was three miles, and now you testify at this time she was a mile and a half?

A. I think you had better take the mean of all of those. I am not absolutely certain whether she was three miles or a half a mile or a mile and a half.

Q. Are you as sure in your recollection as to the points she was off your bow as you are of how far away she was when you first saw her?

A. I am not certain of the distance; I can give you an approximate distance that the vessel was. The vessel, I say now, she was about a mile and a half when I first saw her.

Q. As an officer in charge of a vessel of the size of the “Argyle,” did you know that that vessel, the “Gualala,” was a point and a half off your starboard

(Testimony of D. S. McAlpine.)

bow, and yet paid no more attention to her than to glance at her as you passed back and forth on the bridge?

A. There was no reason for me to keep an eye on the vessel; she was clear on my starboard bow.

Q. In your opinion, any vessel a point and a half on the starboard bow and you see her red light showing *to* you are well clear of her? [61—33]

Mr. CAMPBELL.—I object to the question as being a hypothesis that is not a fact.

Mr. LILLICK.—My recollection is he saw her green light and then saw her red light after the whistle was blown, and I am asking him, when a vessel is on the starboard bow only a point and a half on the starboard bow, he does not think it is necessary to watch that vessel when the red light is showing.

Mr. CAMPBELL.—He has not testified that he was not watching her at that time.

A. When her green light was opposite to my green light she was well clear, but when his red light showed to me, to my starboard bow, then I knew he was going to cross my bow.

Mr. LILLICK.—Q. As I understand, you do not remember when that red light came up; you only know the whistle blew and you saw that red light. That is a fact is it? A. Yes, sir.

The COURT.—Q. You mean by that the red light did not show before that?

A. No, sir, it did not show before that.

Q. Or you did not see it before that?

A. It came in view after he blew his one whistle.

Q. Before you observed it?

(Testimony of D. S. McAlpine.)

A. I observed it when he blew the one whistle.

Mr. LILLICK.—Q. Were you looking at the “Gualala” when he blew his one whistle?

A. No, sir, I do not remember.

Q. Is it not a fact that you were not looking at her at that time, but that when the whistle was blown on the “Gualala” you then looked up and saw this red light? A. It might be.

Q. Is it not a fact? A. I cannot say.

Q. Don't you remember testifying before the inspectors that the whistle of the “Gualala,” this passing signal, after it had blown [62—34] that you looked up and it was then for the first time that you saw this red light. You remember testifying this way? A. I cannot say I remember.

Q. Is that not the fact? Did you not testify that when that one whistle was blown your attention was directed to it, and you saw the red light. You do not know when the red light showed first?

Mr. CAMPBELL.—I think if you are going to examine him as to the testimony he gave before the inspectors, you should read the questions and answers to him and not paraphrase it in your own language.

Mr. LILLICK.—I should be glad to do so.

Q. Do you remember this testimony before the inspectors, Mr. McAlpine:

“Q. Did you notice any difference—whether the red light came up, and the green light went out, or *vice versa*?

“A. His green light was to our green light. He was clear then and would have gone two to

(Testimony of D. S. McAlpine.)

three ship's lengths from our vessel. When I heard his one whistle, it called my attention to him; when I saw his red light, sir, she was three to four lengths away."

Do you remember that testimony? A. Yes, sir.

Q. Then, it is a fact that the whistle on the "Gualala" called your attention to it, and you then looked and saw the red light. Is it not true that the whistle called your attention to it?

A. Certainly, he brought my attention to it.

Q. You did not know when that red light was first visible from the "Argyle"?

A. No, sir, not until I saw it come into view.

Q. Not until you saw it come into view. You did not see it come into view, you heard the whistle, and then you looked up and [63—35] you saw the red light? A. Yes, sir.

Q. You do not know when that red light was first observable from the "Argyle"? A. No, sir.

The COURT.—Q. That is so? A. Yes, sir.

Q. As I understand, you do not know how long the red light may have been in view from the "Argyle" before he blew this whistle?

A. Not accurately.

Mr. LILLICK.—Q. When did you change your course on the "Argyle" from the course upon which you were proceeding to the course one-half a point port with reference to these lights?

A. I did not change it.

Q. Your log as I remember it—your log reads, "259 lookout-man reported green light on starboard

(Testimony of D. S. McAlpine.)

bow two points, altered course one-half point to port, received one whistle from vessel." Do you remember when your course was altered one-half a point to port? A. No, sir.

Q. You do not? A. No, sir.

Q. Do you know whether your course was altered one-half a point to port? A. It was not altered.

Q. It was not altered? A. No, sir.

Q. Do you know who wrote this in the log-book?

A. Some of it is in my writing, and some of it is in someone else's.

Q. Do you know whose writing the language is, "Altered course one-half point to port, received one whistle from vessel." Do you know whose handwriting that is? A. No, sir.

Q. Do you know when that was written in the log?

A. No, sir, I could not say.

Q. Your testimony as I understand it is, that the course of the "Argyle" was never altered one-half a point to port from the [64—36] time the lights of the "Gualala" were first seen from the "Argyle"?

A. It was not altered?

Q. It was not altered? A. No, sir.

Q. You do not know whose handwriting that is?

A. No, sir.

Q. How many people write in your log-book?

A. The second mate and myself; sometimes the mate.

Q. Sometimes the first mate? A. Yes, sir.

Q. Do you know the handwriting of the first mate and the second mate? A. No, sir.

(Testimony of D. S. McAlpine.)

Q. Does the captain ever write in that log-book?

A. Yes, sir, occasionally.

Q. He does? A. He has done it.

Q. How long were you running with the first mate and the second mate before this collision? How long were you on this vessel with the first and second mate before this collision? A. 15 days.

Q. During that time they wrote in this pilot-house log when it was their watch? A. Yes, sir.

Q. Was there anyone on this watch with you?

A. No, sir.

Q. When did the captain come on deck that morning?

A. He came on deck after I called him, at 2 o'clock that morning.

Q. And when after the lights of the "Argyle" were seen?

A. I do not remember when, shortly after that.

Q. Was it before the whistles were exchanged between the two vessels?

A. No, sir, it was afterwards.

Q. And how long prior to the collision, the impact?

A. About the same instant.

Q. About the same instant? A. Yes, sir.

Q. Is that his handwriting in the log?

A. I don't know.

Q. Don't you know the captain's handwriting?

A. No, sir. [65—37]

Q. How long did you continue on the same vessel with that captain? A. Two or three months.

Q. And he wrote in the log that you wrote in dur-

(Testimony of D. S. McAlpine.)

ing the time? A. Yes, sir.

Q. And you don't know his handwriting?

A. No, sir, I don't know as to his handwriting.

Q. What course were you steering before the lights of the "Gualala" came up?

A. Northwest one-half west.

Q. Northwest one-half west? A. Yes, sir.

Q. What was the first change you made in the course? A. From that course hard aport.

Q. That order of hard aport was given after the passing signals? A. Yes, sir.

Q. Any other change made in the course of the "Argyle" after the whistle was blown?

A. No, sir, not until after the collision.

Q. Do you remember that just prior to the collision there was a haze flying on the water?

A. Yes, sir, there was a slight haze; there had been fog at 2 o'clock for which I called the captain.

Q. And there was still a slight haze flying over the water, was there not? A. Hardly noticeable.

Q. Enough to obscure the light of the "Gualala"?

A. Not enough to obscure any lights.

Q. Not enough to obscure any of those side lights, the green and red? A. No, sir.

Mr. LILLICK.—We should like to offer that log that is called the pilot-house log that we have been referring to in evidence as to that particular page in the pilot-house log-book [66—38] and ask that it be marked Libelant's Exhibit Beadle 2.

(The book is marked, "Libelant's Exhibit Beadle 2.")

(Testimony of D. S. McAlpine.)

Q. I hand you what purports to be the chief officer's log of the "Argyle" under date of Tuesday, October 15, 1912, and ask you in whose handwriting the letters and figures, 259 Lookout-man reported green lights two points on Str. Bow, altered course one-half point to port, received one whistle from vessel 3.05, reversed engines full astern, 3.07 collided with Stmr. "Gualala" lowered boats, picked up crew of "Gualala," called steamer "Daisy Freeman" to stand by wreck; and proceeded towards San Francisco at 5.10—2 men seriously injured. In whose handwriting is that?

A. I think it is the chief mate's.

Q. On that same page the words, "Answered with one blast, gave three blasts, helm hard to port." In whose handwriting is that?

A. I think that is the same man's.

Q. You think that is the same handwriting?

A. Yes.

Q. Did you see this log-book on the 15th day of October?

A. I do not know whether I did or not now.

Q. At any event you do not know in whose handwriting that is? A. I could not swear to that.

Mr. CAMPBELL.—We have the witness here who wrote the log.

Mr. LILLICK.—We will only offer that particular page of the log in evidence as Libelant's Exhibit Beadle 3.

(The book is marked "Libelant's Exhibit 3.")

Mr. WALL.—I don't suppose we have to join in

(Testimony of D. S. McAlpine.)

that offer. I suppose we have the benefit of all that offer.

Mr. CAMPBELL.—As I understand it, this is a trial under [67—39] consolidation.

Mr. WALL.—We have the benefit of all testimony.

Mr. LILLICK.—Q. Was there anyone else on the bridge with you that evening and during the time just prior to this collision other than the captain who came up there at the instant of the collision?

A. Only the man at the wheel.

Q. When the captain came up on the bridge did he take charge?

A. The collision had occurred then.

Q. Did he take charge when he came up on the bridge?

A. The captain when he comes up at any time takes charge.

Q. As I understand you, by the time the captain arrived there the collision had occurred, the impact of the two vessels? A. Yes.

Q. Did you blow any alarm signals on the “Argyle”?

A. The only signal I blew was the answer to his one whistle, and the three whistles signalling my engines were going astern.

Q. You have just testified that the captain got on the bridge after the impact?

A. I said at the instant of the impact.

Q. Do you remember testifying before the inspectors, Mr. McAlpine, as follows:

“Q. How long do you think it was from the time you first saw her lights?

(Testimony of D. S. McAlpine.)

“A. About five minutes.

“Q. What did you say to the captain when he came up on deck?

“A. He said, ‘Where is that fellow?’ I said, ‘He is on our starboard bow.’

“Q. Then what did he say?

“A. I don’t remember him saying anything.

“Q. What did he say to the man at the wheel?

“A. Nothing.

“Q. Only talking to you? A. Yes, sir.

“Q. How far away was the “Gualala” from you when the captain [68—40] came on the bridge? A. A ship’s length.”

Which is true, Mr. McAlpine?

A. That would be about the instant, a ship’s length; it does not say in a line a ship’s length 300 feet.

Q. Then your testimony is there was no difference between the instant the impact occurred and when the vessel was a ship length away?

A. What I inferred, there was nothing to do with the captain and the collision when he came on the bridge.

Q. Was the captain on the bridge at the time of the impact, or was he not?

A. Yes, sir, he was there at the time of the impact.

Q. He was there on the bridge at the time of the impact? A. Yes.

Q. And he had been there while the “Gualala” and “Argyle” were coming towards each other, at the time then that the “Gualala” was a ship’s length away?

(Testimony of D. S. McAlpine.)

A. I cannot say a ship's length, it was so close when he got there.

Q. Was the "Gualala" a ship's length away?

A. How am I to tell; I told you he came on the bridge at the instant the impact occurred.

Q. The captain, as I remember your testimony before the inspectors, said, "Where is that fellow?" and you said, "On our starboard bow." Is that correct?

A. Yes, sir, that is correct. How long does it take to say those words, an instant?

Q. Did the captain give any orders when he came on the bridge? A. No, sir.

Q. He did not? A. Not until after the collision.

Q. Were any orders given from the time the "Gualala" was a ship's length away until the moment of the impact? A. No, sir.

Q. There was not?

A. I cannot say a ship's length. There [69—41] was no orders given outside the orders I gave to the man at the wheel and the orders I gave through the telegraph.

Q. As I understand your testimony, the "Gualala" was about a ship's length away when the captain came on the bridge, and you testified when the captain comes on the bridge he takes charge?

A. Yes, sir.

Q. The captain then came on the bridge when the other boat was a ship's length away, and, as I understand you, he merely said to you, "Where is that fellow?" And you said, "He is there on the starboard bow." Did he say anything else? A. No, sir.

(Testimony of D. S. McAlpine.)

Q. He did not? A. No, sir.

Q. Gave no orders?

A. There were no orders to be given then.

Q. You said there were no orders to be given?

A. There was nothing else to do. We were going fullspeed astern, swinging on the port helm, trying to clear him. When he finished the question to me the impact occurred.

Q. When did the captain give the first order?

A. After the collision.

Q. What was it? A. I don't know.

Q. Did the captain order any change in the course?

A. Not in my hearing; after the collision.

Q. Do you remember the captain coming on the bridge and ordering the helm hard astarboard?

A. He did no such thing.

Q. Did he? A. No, sir.

Q. He did not? A. He did not.

Q. What were your orders with reference to standing orders upon the "Argyle" when out at sea and on watch with respect to calling the captain when you saw lights?

A. In those cases that refer to lights on shore, to call the captain for all lights. [70—42]

Q. What were the standing orders on the "Argyle," if there were any, with reference to calling the captain when you saw lights?

A. To call him for all lights.

Q. What did you mean by saying a moment ago the orders referred to lights only on shore?

A. You are not in the habit of calling the captain

(Testimony of D. S. McAlpine.)

for every light, you may see a light on this bow or you may see a light on that and have plenty of room; you are competent to take the vessel along yourself.

Q. What did you mean a moment ago by saying that those orders referred to all lights?

A. All shore lights are meant.

Q. Then you did not consider that a standing order of the "Argyle" to call the captain when you saw lights, when you saw the lights of the vessel?

A. No, sir.

Q. What were those standing orders with reference to the lights on the "Argyle"? Do you understand the question?

A. Yes, sir, but I cannot remember the wording of the orders now.

Q. What is your best recollection?

A. To call the captain when there is foggy weather coming on; to call the captain for lights, shore lights—generally meaning shore lights.

Q. And you never call the captain when you saw the lights of an approaching vessel when she is ahead of you? A. No, sir.

Q. You do not? A. No, sir.

Q. And you did not on the "Argyle"?

A. No, sir, I did not.

Q. Even if there is imminent cause of collision?

A. I would in that case any time.

Q. Do you remember what the rule is in case of collision with reference to the bearing lights on your bow?

A. They must be head-on, must be approaching one

(Testimony of D. S. McAlpine.)

another so if the two vessels have range lights and you can see between them there is no [71—43] danger.

Q. What is the rule with reference to side lights, if you remember it?

A. The same side lights are opposite to one another; there is no danger of collision; if a green light is opposite a red light there is no danger of collision.

Q. When two vessels are approaching?

A. If you can see both lights ahead there is danger of collision then.

Q. Is there any danger of collision when the passing lights are red to green or green to red and the other lights can be seen ahead, you understand there is risk of danger of collision? A. Yes, sir.

Q. And as you understand your orders that means you are then to call the captain? A. Yes, sir.

Q. Did you call the captain in this case?

A. I did not see his two lights ahead; when I saw him I saw his green light opposite to my green light and he was head-on; anyone can tell in that position there is no danger.

Q. Then as I understand you, you saw the red light coming on. Did you call the captain?

A. I had no time to call the captain then.

Q. The reason you did not was because you did not have time?

A. The captain was on deck somewhere.

Q. Where was he?

A. I had called him at 2 o'clock.

Q. Then your understanding of the rule is, you do not have to call the captain if the captain happens

(Testimony of D. S. McAlpine.)

to be on deck? A. Of course not.

Q. In other words, if the captain is on deck it is all right, you do not have to call him?

A. Yes, sir.

Q. Do you know how long it would take to stop the "Argyle" [72—44] going at a speed of 8 knots an hour if you reversed full speed astern?

Mr. CAMPBELL.—Of course, you appreciate you are going into matters in cross-examination not touched on direct.

Mr. LILLICK.—I understand the rule, the Court is here for the purpose of having put before it all the facts, and although perhaps I am not confining myself strictly to cross-examination in the sense it might be understood in another court, I have the right to go into this sort of thing.

Mr. CAMPBELL.—There is no difference in this Court of Admiralty as to cross-examining a witness than any other court. I have no objection to your going into the question, but if you are going into matters outside of the direct examination, of course you make the witness your own witness.

Mr. LILLICK.—I have the right to test the witness' knowledge of the "Argyle" and his general ability to handle that vessel in a case of this sort.

The COURT.—You want it for the information it conveys, and not for the purpose; you want it for the purpose of finding how long it would take.

Mr. LILLICK.—I will make the witness my own witness for that one question.

Q. Read the question Mr. Reporter.

(Testimony of D. S. McAlpine.)

(The reporter reads the question.)

A. Four to six minutes.

Q. Loaded as she was that night?

A. Yes, sir.

Q. Mr. McAlpine, will you go over these whistles again and tell us only with respect to the whistles that were blown by the "Argyle" from the time the "Gualala" came into sight until [73—45] the collision?

The COURT.—As I understand the testimony, there were two whistles blown, the "Argyle" one whistle in response to one from the "Gualala," and then three whistles to show he was going backwards.

Mr. LILLICK.—That is my recollection. The reason I am asking the question is I understood that the witness at one time said that he blew one alarm signal.

Q. Did you blow an alarm signal?

A. I blew four whistles.

Q. Did you ever blow an alarm signal?

A. No, sir.

Q. Do you remember making a report to the United States Inspector after the collision that you blew an answering whistle to the whistle on the "Gualala," then blew three whistles indicating your vessel was going full speed astern, and then four?

A. No, sir, I do not remember saying that; I say that three whistles following one whistle was almost in the nature of four as they were blown in such proximity to one another.

Q. Did you not make a report to United States

(Testimony of D. S. McAlpine.)

local inspectors on the 26th day of October, 1912—it is dated 1913, but it is 1912, as follows: “I ordered my helm to port, answering his signal and seeing we were in close proximity, gave three whistles and went full astern with engines. I then gave the danger signal of four whistles, the other vessel being in such a position that I considered we were unlikely to pass clear. Shortly after we collided.” Do you remember making that report? A. Yes, sir.

Q. This report was made on the 26th day of October, 1912, and sworn to? A. Yes, sir.

Q. Do you remember making it? A. Yes, sir.
[74—46]

Q. What is the fact with respect to your having blown a danger signal of four whistles?

A. If I stated there I blew it, I blew it. After giving the three whistles I blew it after that.

Q. Then your testimony a few minutes ago that you first blew one whistle and then three whistles and no more, is incorrect; as a matter of fact, you blew one *one* whistle, three whistles and then four whistles. That is a fact? A. Yes, sir.

Q. On direct examination by Mr. Campbell, my recollection is that you testified that if the “Gualala” and “Argyle” had not changed their course on which they were steering when you saw those lights the first time the two vessels would have passed 600 feet clear of each other? A. Yes, sir.

Q. When you made that calculation, Mr. McAlpine, did you calculate how far apart the two vessels were

(Testimony of D. S. McAlpine.)

when the lights of the "Gualala" were seen on the "Argyle"?

A. Well, as I said before, she was a point and a half on our bow, she would have been that distance off of us when she passed.

Q. When you testified on direct examination that the "Argyle" never changed her course at all except for perhaps a quarter or half a point, what did you mean by that?

A. Well, it is customary when you see a vessel on the bow at that distance to say to the man at the wheel, don't let her come any closer, keep off a little; that is not considered as a change of course.

Q. But you did change her course?

A. Yes, sir, I spoke to the wheelman, I said, "Do you see that fellow, Andrew?" He said, "Yes." I said, "Don't let him come any closer."

Q. What was the wheelman's last name?

A. I don't know, I called him Andrew. [75—47]

Q. Was it Andy Hanson? A. I don't know.

Q. Then you said to the wheelman, "Don't let him come any closer"? A. Yes, sir.

Q. You do not know how far the course was changed?

A. It was not changed any; she may have swung one-fourth or one-half a point; it is not a direct order to change the course.

Q. That is what you meant a little while ago by the entry in the log-book when she changed her course a half a point to port, was not true? A. Yes, sir.

Q. She did change her course at least a fourth of

(Testimony of D. S. McAlpine.)

a point? A. She might have.

Q. It might have been a point?

A. No, sir, that would not have been.

Q. All you said was, "Don't let him come any closer"? A. Yes, sir.

Q. Did you look at your compass?

A. I looked at the wheel-house compass.

Q. How far did he change the course?

A. I could not say.

Q. You did not look at the compass afterwards to see if he obeyed your order?

A. I knew he had because we did not come any closer.

Q. You do not know how many points she swung over? A. She did not change at all.

Q. Then he did not change the course?

The COURT.—He has told his recollection of it, that she may have swung a fourth or half a point, but it could not be a point.

The WITNESS.—It could not be a point.

Mr. LILLICK.—I think that is all.

Mr. WALL.—Q. You said it would take between four and six [76—48] minutes to stop the "Argyle" from full speed, going 8 knots, to stop her still, did you?

A. When I said that I am not prepared to swear that it would take exactly that time; in my opinion I think that would be about the time.

Q. You were on her about two weeks?

A. Yes, sir.

Q. And during those two weeks how much of the

(Testimony of D. S. McAlpine.)

time were you in port?

A. We were down to San Pedro and San Diego while I was on the vessel, and we were in Port Hartford and Oleum.

Q. About how much of that time were you in port, and about how much of that time were you at sea?

Mr. CAMPBELL.—This examination is also objected to.

Mr. WALL.—I am cross-examining on your question as to the time to stop her.

Mr. CAMPBELL.—I did not ask him about that.

Mr. WALL.—I am cross-examining on Mr. Lillick's examination.

Mr. CAMPBELL.—You are cross-examining on his cross-examination?

A. About five days in port out of that time.

Mr. WALL.—Q. And the rest of the time at sea?

A. Yes, sir.

Q. Did you actually ever see her stop when she was going 8 miles an hour and give the stop bell and reverse immediately afterwards? A. No, sir.

Q. So you actually do not know from your own knowledge how long it would take to stop her?

A. No, sir, not from my actual knowledge.

Q. And you never saw the red light and the green light of the "Gualala" at any time together prior to the collision, did you? A. No, sir.

Q. All of the time prior to the collision the "Gualala" was on your starboard bow?

A. She was never anywhere else until the collision.

(Testimony of D. S. McAlpine.)

Q. According to your statement? A. Yes, sir.

Q. And you know that in the situation in which you then were that the "Gualala" had the right of way so far as your vessel was concerned?

A. After she showed us her red light.

Q. At any time don't you know the law is that if one vessel has another on her starboard bow she must give way to that other. Do you know that to be the law? A. Yes, sir.

Q. You say you saw the green light?

A. Yes, sir.

Q. And you never prior to the collision saw the two lights together? A. Yes, sir.

Q. But you did afterwards see the red light?

A. Yes, sir.

Q. Will you tell the Court why it was when the "Gualala" turned so that you lost her green light and picked up her red light why you did not see the two lights together?

A. Just at that particular minute I was not looking at the "Gualala."

Q. At that crucial moment when she changed from the green light to the red light you were not looking at her; is that the fact?

A. Not looking in that direction.

Q. Then you were not keeping a lookout on her at the time when she turned so as to lose her green light and show her red light; is that the fact?

A. I was not looking at her at that actual moment.

Q. You were not looking at her? A. Yes, sir.

Q. She was over on the starboard bow?

(Testimony of D. S. McAlpine.)

A. Yes, sir.

Q. And your two vessels coming together at the rate of 16 knots an hour?

A. We were coming parallel.

Q. You were not separating, were you?

A. Yes, sir, we were separating.

Q. How were you separating?

The COURT.—One was going northwest and the other southeast. [78—50]

Mr. WALL.—Q. Did you at any time prior to the collision take any particular notice of the bearings or change in bearings of the “Gualala’s” light?

A. No, sir.

Q. You did not? A. No, sir.

Q. And you never at any time saw her masthead light and her two side lights at the same instant?

A. No, sir.

Q. Now, at the time you heard his one whistle, as I understand your direct testimony, you then were of the opinion that a collision was inevitable, either that he would run into you or you would have run into him, is that correct?

A. He would have run into us.

Q. He would have run into you?

A. Had nothing been done on the “Argyle” he would have run into us.

Q. And when he blew the one whistle you were satisfied he would run into you unless you took some action? A. Yes, sir.

Q. Perfectly satisfied of that in your own mind?

A. Yes, sir, I was.

(Testimony of D. S. McAlpine.)

Q. And still you answered his one whistle with one whistle? A. Yes, sir.

Q. That means, did it not, that you acquiesced in his signal, that you knew that he was putting his helm to port, and by your one whistle, he would know that you were putting your helm to port?

A. Yes, sir.

Q. And at that time you were satisfied that he would run into you if you did not take some action?

A. Yes, sir.

Q. You knew by putting your helm to port you would go over towards him?

A. I may have swung clear of him; it was the only possible way to clear him.

Q. You knew you would have to swing into his direction?

A. That was the only action to take; if I put my helm the other way he [79—51] would hit us amidships or forward somewheres. There is no doubt whatever about that. I took the only action possible, trying to clear him, to let me swing down the other side; I knew him to be on the port helm. Therefore by putting my helm aport in some manner there might have been space to come in a parallel position and swing away from one another; it was the only alternative.

Q. How long have you been a licensed officer?

A. Four years.

Q. Don't you know as a licensed officer, when there is danger, or when you realize there is danger, you must give the other fellow an alarm signal?

(Testimony of D. S. McAlpine.)

A. Is it not better—

Q. (Intg.) Answer my question, and if you want to make an explanation you may do so after?

A. It is.

Q. You know you should give an alarm signal?

A. Yes, sir.

Q. And instead of giving an alarm signal you acquiesced in his one signal, didn't you?

A. Yes, sir.

Q. You said it was a perfectly clear night, you could see the usual distance you see on clear nights?

A. Yes, sir.

Q. And the first time you saw this light it was about three miles away? A. He may have been nearer.

The COURT.—We have had that several times.

Mr. WALL.—I only want to ask him one more question.

Q. What distance away can you see a steamer's masthead light on a clear night? A. Five miles.

Q. Why didn't you see it at a greater distance than three miles away? A. I cannot say that now.

Mr. CAMPBELL.—That depends upon the other fellow's lights.

Mr. WALL.—You admit the lights were all right. I only want to show the natural inference about keeping the proper lookout. [80—52]

Q. What time did the captain come on deck that night?

A. Somewhere about half-past two, I think.

Q. I understood you to say two o'clock?

A. I called him at two o'clock.

(Testimony of D. S. McAlpine.)

Q. He came on deck at half-past two?

A. Yes, sir.

Q. Why did you call him?

A. Because it was then foggy.

Q. And he came on deck a half an hour after you called him?

A. It only remained foggy a few minutes. I called him again and told him that the weather had cleared.

Q. In regard to that entry in the pilot-house log, I want to ask you who writes up the pilot-house log?

A. The officer whosever watch it is.

Q. Did you ever know anybody to write up the log for the officer who was on watch except the officer who was on watch?

A. No, sir, I cannot say that I have.

Q. Did you not have some other entry in your watch except the entry, 259. Lookout-man reported green light on starboard bow two points. You say that is all in your writing there? A. Yes, sir.

Q. Did you not write up your watch after you came off watch. You made that entry, did you not?

A. Yes, sir.

Q. Did you not make any other entry?

A. I don't remember now.

Q. You would remember it in the case of a collision with another vessel, whether you made any other than that one entry. You do remember you made this one entry, and you do not remember making any other entry? A. No, sir.

Q. And you do remember that someone else made that entry in your watch? A. Yes, sir. [81—53]

(Testimony of D. S. McAlpine.)

Q. And you do know someone else in some other handwriting made an entry in your watch?

A. Yes, sir.

Q. And you do know that that is a very unusual thing for anyone else to make an entry in the watch of the man who is on deck?

A. It is not particularly unusual, I may have left the bridge on my watch.

Q. I thought you said it was. Don't you know there was some other entry in that watch made by you? A. No, sir; I do not remember.

Q. Don't you know there has been some entry there, and it has been rubbed out?

A. It looks as though it was.

Mr. CAMPBELL.—I have here a very fine magnifying-glass, and I wish you would point it out.

Mr. WALL.—The witness says there has been an erasure.

Mr. CAMPBELL.—I wish you would point it out to me.

Mr. WALL.—If the facts appear to me to be that way I have to present it that way.

Mr. CAMPBELL.—Point it out.

Mr. WALL.—It appears to me there has been an erasure.

Mr. CAMPBELL.—I have heard a great deal about there being a change. I would like to have you point it out.

Mr. WALL.—This is the first time I have seen the log book.

Mr. HOGEVOLL.—Q. About the time you blew

(Testimony of D. S. McAlpine.)

one whistle did you know there was any danger?

A. Yes, sir.

Q. You knew there was a danger? A. Yes, sir.

Q. Why didn't you blow one whistle before you got that close to the other ship?

A. I did not have to blow any whistle when his green light was opposite to my green light. We were going clear; if I blew I would blow two whistles.

[82—54]

Q. Why didn't you blow two whistles then?

A. That is what you mean?

Q. Yes.

A. It is not customary to blow passing whistles at sea.

Q. Did it seem to you you would pass each other at that time? A. Yes, sir.

Q. And he was a point and a half on your starboard bow? A. Yes.

Q. Do you know the international rules of navigation? A. Yes.

Q. I will ask you what the international rule of navigation says when you are a point and a half to the starboard or to port that it is your duty to blow one whistle, don't you know that?

Mr. CAMPBELL.—That is a hypothetical question which he is assuming, and I would like to see the law.

Mr. HOGEVOLL.—I will give you the section.

A. When I first saw him we were not then in such a position that it was necessary to blow passing whistles.

(Testimony of D. S. McAlpine.)

Q. In other words, if you see there is great danger of collision it is not your duty to blow a signal of danger, but it is your duty to blow a whistle indicating that you understand the other man, and that you would be clear? A. No, sir, I do not understand.

Mr. HOGEVOLL.—I am calling your attention to section 2043.

Q. Why didn't you see the ship more than three miles in that clear night? A. I cannot say.

Q. You may have seen it six miles away?

A. I might.

Q. Your ship was loaded with very dangerous explosives? A. Yes, sir.

Q. And nevertheless you took chances of a narrow margin? [83—55]

A. No, sir, I did not. It was well clear of my ship when his lights were reported to me, he was well clear.

Q. It was well clear? A. Yes, sir.

Q. You understand what is meant by *turns* end-on when ships are heading-on? A. Yes, sir.

Q. What is it?

A. Ships are heading end-on when the lights on the other vessel are opposite to you and you can see both lights, in fact, all three, mast-head light and sides lights; when vessels are heading end-on. In no other position can you see it.

Q. What I cannot understand is this: Why did you wait until danger was so near that you could not get out of the way with that explosive substance on the ship?

(Testimony of D. S. McAlpine.)

Mr. CAMPBELL.—That is objected to as arguing the case.

A. There was no danger until he started to port his helm and show his red light.

Mr. HOGEVOLL.—Q. That is the only cause of the danger?

A. That was the beginning of the danger.

Q. You answered this course. Your explanation to the Court in this case was you would have been 600 feet away if the ship had not altered their course?

A. Yes, sir.

Q. And that is true? A. Yes, sir.

Q. How far away did you say you were when you altered your course?

A. How far were the two vessels apart, do you mean?

Q. Yes. A. I said two to three ship's lengths.

Q. Your idea is the other ship did all they could to come right after you, to hit you?

Mr. CAMPBELL.—I submit he is arguing the case.

A. I did not say that. [84—56]

Mr. CAMPBELL.—I would like to see the International Rule he referred to; and also to the part that Mr. Wall referred to giving the alarm signal.

Redirect Examination.

Mr. CAMPBELL.—Q. To clear up this question as to what you did when the "Gualala" was approaching, I wish you would state to the Court just how you conducted yourself on the bridge of the steamer that night. That is to say, whether you were

(Testimony of D. S. McAlpine.)

standing in one position and watching or walking across the bridge?

A. I was walking up and down the bridge looking in all directions.

Q. Is it customary where you observe the light of another vessel well enough on your bow to indicate to you that the vessel will go clear to stand in one position on the bridge and constantly watch that light?

Mr. LILLICK.—Objected to as calling for the conclusion of the witness; he knows nothing about that.

A. It is not necessary.

The COURT.—You might as well qualify him.

Mr. CAMPBELL.—Q. How long have you been an officer on steamers?

A. Over four years on this coast.

The COURT.—What is your contention, that it is not customary to observe the rule as laid down by counsel's question?

Mr. LILLICK.—My understanding of the rule is this: Where one vessel is approaching another vessel, when there is danger of collision, that it is a question of fault not to keep the lookout on the bridge watching another vessel.

The COURT.—That would be quite natural, but this witness contends there was no danger until the red light showed. [85—57]

Mr. CAMPBELL.—Q. My question was when the officer on the bridge sees a light on the bow which he does not deem to be dangerous, whether it is cus-

(Testimony of D. S. McAlpine.)

tomary to stand on the bridge and watch that light or to walk up and down on the bridge and keep the usual lookout?

A. It is not customary to stand and watch the light at all. Had I seen the vessel's two lights ahead, then it would be my duty; he was well clear on the starboard bow; there was no need to watch that light all the time.

Q. When you turned from the starboard side of the bridge and walked to the port side would you keep your eye on the "Gualala's" light during the entire time you walked across the bridge?

A. No, sir; my back would be to it.

Q. What would you be doing?

A. I would be looking over the other bow.

Q. When you turned back from the port side to the starboard bow what would you do?

A. See him then.

Q. At any time on the bridge from the report of the green light up to the time of the collision what were you doing with respect to maintaining a lookout?

A. I was keeping the usual lookout on the ship's bridge, as I always do.

Q. Were you during the interval performing any other duties?

A. No other duties except just to pass up and down the ship's bridge.

Q. Why was it that you blew this one whistle in answer to his one whistle?

The COURT.—He has gone over that.

(Testimony of D. S. McAlpine.)

Mr. CAMPBELL.—Q. What explanation have you, Mr. McAlpine, [86—58] of the report which Mr. Lillick apparently read from, although I believe it is a copy, in which you seem to have stated following the giving of your three whistles—

The COURT.—(Intg.) The explanation he made at the time of cross-examination was that his testimony given there must have been true.

Mr. CAMPBELL.—Q. Is it a fact, or is it not a fact, that following the giving of the three danger signals you followed it giving four signals?

Mr. LILLICK.—Objected to as having already been answered.

Mr. CAMPBELL.—I will withdraw the question.

Mr. LILLICK.—Q. Mr. McAlpine, did the lookout report to you at all as to the lights on the “Gualala” after they had been reported to you on the starboard bow?

A. He reported the green light on the starboard bow.

Q. That was the only report you got from your lookout? A. Yes, sir.

(An adjournment is here taken until to-morrow, Thursday, October 16th, 1913.) [87—59]

Thursday, October 16th, 1913.

[Testimony of Richard Dickson, for Claimant.]

RICHARD DICKSON, called for the claimant, sworn.

Mr. CAMPBELL.—Q. What is your age, Captain? A. I am 53.

Q. What is your business? A. Master mariner.

(Testimony of Richard Dickson.)

Q. Of what vessel are you at present the master?

A. At present I am master of the steamer "Roanoke."

Q. The "Roanoke"? A. Yes, sir.

Q. Were you master of the steamer "Argyle" at the time of her collision with the steam schooner "Gualala"? A. I was.

Q. Were you up at the time of the collision?

A. I was.

Q. Had you been up during the entire night?

A. I was up from 2 o'clock in the morning until the time of the collision, which to the best of my recollection was 3:07 in the morning.

Q. Shortly after 3 o'clock?

A. Shortly after 3 o'clock.

Q. How long had you been master of the "Argyle" at that time? A. In all about five years.

Q. About five years? A. Yes, sir.

Q. What did you do between the time that you first came on deck and the time when you had your first intimation of the presence of the "Gualala"?

A. I was below until 2 o'clock; I was called at 2 o'clock. A little fog came in, which it is always my business to be on the bridge in foggy weather or misty weather any time; I immediately turned out of my bed and had my clothes on and was just putting my shoes on when the third officer sung out from the bridge: "Captain, it is good and clear now." I says, "That is good; I hope you will keep it so." I had quite a little sleep, so I put my shoes on and went outside and stood against [88—60] the galley door about 20 minutes.

(Testimony of Richard Dickson.)

Q. Where is the galley door?

A. On the poop deck, on the quarter deck, amidship quarter deck.

Q. Go ahead and tell your story.

A. I stood there about 20 minutes, something like that. It was about 20 minutes to three when a little more fog came in and I then went up on the bridge, and the fog stayed for probably about two minutes, and we gave a couple of blasts of the whistle and it cleared off again, and I had occasion then to go below, which I did and I stayed below, I presume, for from between 10 to 15 minutes.

Q. You went to the toilet? A. Yes, sir.

Q. What was the first intimation that you had of the presence of a steamer? A. I heard a whistle.

Q. Where were you at that time?

A. On the deck, down on the deck coming from the toilet, on the main deck.

Q. What did you do when you heard this whistle?

A. I immediately made for the navigation bridge as fast as I could get there.

Q. Can you show us from this photograph of the "Argyle" how you went to the navigation bridge?

A. I was right down there (pointing).

Q. Mark that point?

A. (Contg.) When I heard the whistle.

Q. You were here (pointing)?

A. Our toilet is right there (pointing); it is my toilet.

Q. On the extreme stern of the vessel?

A. That is my toilet.

(Testimony of Richard Dickson.)

Q. Mark it with the letter T.

A. Yes, sir (marking). I was coming from here (pointing) and walked right—up here there is a step here and I looked around and saw a light over [89—61] on the starboard quarter, and while here—we have got a mess-room here, I also stopped there to get a cup of coffee, and as I was coming out from there with the coffee in my hand I heard the whistle; I was then outside here when I heard the whistle (pointing).

Q. Mark that point C.

A. Yes, sir; I immediately went right there; there was a step from there to the poop deck, or quarter deck on the port side, on this side from my room.

Q. Underneath the bridge?

A. Yes, sir, underneath the navigation bridge, there is a step right up to the navigation bridge; when I came on the navigation bridge I saw the steamer about a point and a half on the starboard bow, or between a point and a point and a half away, and the masthead light and the red light crossing our bow.

Q. You say the first intimation you had of the presence of a steamer was one whistle from the “Gualala”?

A. Yes, sir.

Q. Did you hear any response from the “Argyle”?

A. I did.

Q. What was it?

A. One whistle accompanying by others.

Q. As you were passing did you hear any other whistles from the “Argyle”?

(Testimony of Richard Dickson.)

A. I heard some more.

Q. Where were you at the time the second set of whistles were blown?

A. I was just getting up on the poop deck.

Q. That is the deck which leads to the foot of the bridge past the smokestack.

A. I was coming up from the main deck to the poop deck.

Q. What were those whistles?

A. To the best of my recollection it was three; I am not positive; it was to the best of my [90—62] recollection.

Q. At the time you reached the bridge do you know how your engines were working?

A. It was reported to me full astern, it was indicated to me afterwards by our engineers.

Q. Did you give any orders to the quartermaster or to the engine-room after you reached the bridge?

A. No, sir; I did not give any because there was no time to give any orders.

Q. What happened after you reached the bridge?

A. The collision took place a few seconds after.

Q. How did you strike the "Gualala"?

A. We struck the "Gualala," to the best of my recollection, between the forecastle and right up to the foremast, about an angle of probably about 40 degrees from forward of the "Gualala." I am not positive of that, but that is the way it looked to me.

Q. Do you know how the helm of the "Argyle" was at the time you went on the bridge?

A. To the best of my recollection it was hard aport.

(Testimony of Richard Dickson.)

Q. How long was the "Argyle"?

A. She is 320 feet two inches long.

Q. What is her beam? A. 40 foot 7 inches.

Q. And her depth?

A. She is 27 feet deep from keel to the deck.

Q. What is her tonnage?

A. 1,880 tons net and 2,953 gross.

Q. How did she answer her helm when she was loaded?

A. Well, she was rather slow coming round on the helm when she was loaded; at that time her draft was 25 foot two inches. [91—63]

Q. What was there, if anything, about the construction of the vessel which made her slower in responding to her helm than other vessels of the same length, beam and depth?

A. She was a keel vessel, and a keel vessel will always come very slow, a great deal slower than a ship without any keel.

Q. What do you mean by a keel vessel?

A. A keel vessel has got a keel on the bottom of the ship; the keel I think was about 8 inches scale, I think it is; that was right from the bow to the stern, right fore and aft along the bottom of the ship, and in turning that keel always prevents her from turning fast, going throught the water.

Q. As I understand, it is a vertical piece of steel extended down from the flat bottom of the vessel?

A. Yes, sir.

Q. What was that keel put on there for?

A. That was put on the ship when they started to build her.

(Testimony of Richard Dickson.)

Q. Within what distance, in your judgment, could the "Argyle" be stopped when going at 8 knots?

A. It would take me about seven minutes to stop the "Argyle" from full speed ahead to take her headway right off; between seven and eight, a little more than seven.

Q. Do you know what speed she was making this night?

A. Making eight, a little over 8, 8.2 to the best of my recollection.

Q. Referring to the chart that is on the blackboard, I want to ask you this question: Assuming that the "Gualala," a steam schooner 120 feet long, loaded, while coming down the coast below Point Arena and on a southeast course, making 8 knots per hour, observed a point and a half on her port bow the red [92—64] light of the "Argyle," a steamship 320 feet long, loaded, making 8 knots per hour, and that thereupon the "Gualala" ported her helm and payed off one and a half points in half a minute, and then hard aported for 25 or 30 seconds, and then stopped and reversed for a minute, but, in the meantime, had swung four and one-half points more, so that she was then on a south southwest course and still going ahead a mile an hour under a hard aport held, would it, in your judgment, have been possible for the "Argyle," in the minute following the stopping and reversing of the "Gualala," to have so changed her course to port as to have first shown her green light to the "Gualala" when the latter stopped and reversed, and then to have struck the "Gualala" prac-

(Testimony of Richard Dickson.)

tically bow on when the latter was headed south southwest?

A. It could not be with the "Argyle"; it would take a great deal smaller ship to do that than the "Argyle." In my judgment it could not be done.

Cross-examination.

Mr. LILLICK.—Q. From your experience, Captain, on board the "Argyle," how long would it take to turn the "Argyle" to a position six points off her course to port if her helm was put hard astarboard when she was going at the speed of eight knots an hour?

A. If they kept on going full speed all that time she probably would take one-half a mile or even more; she would not take that much, probably one-fourth a mile.

Q. And how long in time?

A. At six points she will take probably about three minutes. [93—65]

Q. Probably about three minutes?

A. Yes, sir, in that time, two minutes.

Q. Would she not cover more than a quarter of a mile in three minutes?

A. I might say two minutes.

Q. You imagine two minutes?

A. I never tried it exactly.

Q. When you said in answer to the hypothetical question by Mr. Campbell a few minutes ago that it would not have been possible you do not take into consideration that the helm might have been put hard astarboard instead of hard aport?

(Testimony of Richard Dickson.)

Mr. CAMPBELL.—Which helm?

Mr. LILLICK.—The “Argyle’s.”

A. I will say that could not be possible.

Q. If in two minutes and in the space of a quarter of a mile the “Argyle” could have changed her course six points in which way she was theretofore proceeding at the rate of speed of 8 knots per hour, she could have been in a position whereby a sudden change in the course thereafter the two vessels could have come together? A. I do not think she could.

Q. You do not think so? A. No, sir, I do not.

Q. Referring to your testimony about the whistles, are you positive in your recollection about your having been at the point on the “Argyle” where you said you were a few minutes ago after the whistle was heard by you from the “Gualala”?

A. I heard the whistle.

Q. Where were you?

A. Down on the main deck; when I heard the whistle I was on the aft part of the poop; the aft part of the main deck; the aft part of the middle poop deck. [94—66]

Q. Are you positive about that, captain?

A. I am.

Q. Do you remember testifying before the United States Inspectors in November, 1912?

A. Yes, sir.

Q. Reading on page 10 of your testimony before the inspectors you were asked this question:

“Attorney LILLICK.—Q. Where were you when the one whistle was blown?

(Testimony of Richard Dickson.)

“A. (Witness.) I was down aft in the toilet.”

Do you remember testifying about that, Captain?

A. I had been at the toilet; I had come from the toilet.

Q. I will again read the question and answer:

“Q. Where were you when the one whistle was blown? A. I was down aft in the toilet.”

A. I meant by that I had been aft at the toilet.

Q. You were at the toilet?

A. I had been aft at the toilet. I was not aft in the toilet at the time the whistle was blown.

Q. Then you want your testimony corrected in respect to that?

A. I had been aft in the toilet and was coming forward on the main deck and I stopped in the aft part of the main poop deck where our mess-room is and I took a cup of coffee, and coming out from there is when I heard the whistle. My mission was from the toilet in the beginning.

Q. From the time you came on the bridge, Captain, until the moment of the collision how much do you think the “Argyle” altered her course?

A. I would possibly think it might probably be a point or in that neighborhood, or three-fourths; that is about all she could do in that time.

Q. Now, about these whistles, you testified to the best of your recollection there were three whistles after that one [95—67] whistle. Have you any independent recollection about that at all?

A. I have no independent recollection; I heard

(Testimony of Richard Dickson.)

whistles and whether it was three or not I am not positive.

Q. You only remember there were certain whistles blown? A. Yes, sir.

Q. What kind of communication was there between your room on the "Argyle" and the bridge?

A. There is a speaking-tube right next to my bed where the pillow is.

Q. I understand you to say you gave no orders at all after you got on the bridge?

A. I had no time to give any orders, everything was done then that could be done under the circumstances.

Q. Did you have any reason for not mentioning the whistles other than that one whistle that you say you heard when you made your report to the United States Inspectors immediately after the accident?

A. I think I made the same report there. I could not make any other; that is a true report.

Q. Your report to the Inspectors dated October 15th, 1912, and sworn on the 26th day of October is as follows:

Mr. CAMPBELL.—Are you reading from the original report?

Mr. LILLICK.—No, I have a copy furnished by the inspectors. I will let you look at it.

Mr. CAMPBELL.—I just asked if that was the original report.

Mr. LILLICK.—Q. "During this clearing I went below for a few minutes and while engaged below, I heard one blast of a steam whistle. I immediately

(Testimony of Richard Dickson.)

rushed on deck and saw a steamer's red light and masthead light one and a half points on our starboard bow. The engine was immediately reversed full speed astern, but not in time to take [96—68] the headway off before we came together." Did you have any reason for not mentioning the other whistle, or did you just forget it?

A. I presume I must have forgot it. It is customary when in close proximity to another vessel to give three whistles when you start to back; if in any danger you give four whistles or more; three whistles always is the backing signal.

Mr. CAMPBELL.—Now that you have got before the Court the report filed before the inspectors I think it is only fair that you read the testimony before the inspectors in which he testified to the three whistles.

Mr. LILLICK.—I will be glad to, Mr. Campbell, if you want to get it in the record.

Mr. CAMPBELL.—It is sufficient if you admit that he did testify before the inspectors as he did testify to-day.

Mr. LILLICK.—Do you want me to read all of it?

Mr. CAMPBELL.—Just the three whistles.

Mr. LILLICK.—I am reading from page 10 of your testimony before the inspectors. I will read from page 9 in order to make the context clear:

“Inspector DOLAN.—Q. What is your practice prior to leaving the bridge, before retiring?

“A. My practice is to instruct the officers to be

(Testimony of Richard Dickson.)

careful and keep well clear of all vessels, and should they happen to meet”—

Mr. CAMPBELL.—I do not care to have you read all the testimony. I am simply referring now to the matter of whistles; as to what his custom is in maintaining watches and reports, I do not care about that.

Mr. LILLICK.—The last line on page 9, commencing on [97—69] the line before the last line.

“We blew a couple of whistles and it cleared up again; and I had occasion, then, to go below at the time, and the next I heard was the whistle ahead on the starboard bow.

“Q. You heard one whistle, or a series of whistles? A. One whistle.

“Q. You went right to the bridge?

“A. Yes, sir.

“Q. Were the engines backing then?

“A. Yes, sir, before I got on the bridge.

“Q. When you got on the bridge what light did you see?

“A. I saw the red light and a bright light, which I noticed; it was her masthead light.

“Mr. GIBBS.—Q. If you heard one whistle when you were in your room, how is it you could not hear three whistles while you were coming to the bridge? And you said you could not distinguish whether it was three?

“A. I never mentioned four whistles. I said, to the best of my belief—

“Q. You said you weren’t certain?

“A. I was not in my room.

(Testimony of Richard Dickson.)

“Inspector DOLAN.—He said he was below.

“Q. (To WITNESS.) Is that to what you alluded?

“A. Yes, sir, I was not in my room; I was down on the main deck.

“Attorney LILLICK.—Q. Where were you when the one whistle was blown?

“A. (WITNESS.) I was down aft in the toilet.

“Q. How long after the one whistle was blown was it before the three whistles were blown?

“A. They were pretty close together.

“Q. Did you hear the three whistles from the ‘Gualala’? [98—70] A. No, sir.

“Q. You heard only the three whistles from the ‘Argyle’? A. Yes, sir.

“Q. Didn’t you say after the collision, and when you were on your own vessel, in hearing of several people, that the mate on your bridge, had starboarded his helm instead of porting it?

“A. This is the first I hear of it.”

Mr. WALL.—I would rather you would not read any further until I cross-examine the witness.

Mr. LILLICK.—Q. Is it not a fact that your recollection with respect to those three whistles is rather indistinct?

A. I could not tell you exactly whether it was three or four; he blew several whistles.

Q. He blew several whistles?

A. He blew other whistles besides the one.

Q. What orders had you given, or what orders did

(Testimony of Richard Dickson.)

you have as standing orders on the "Argyle" with respect to being called when lights were observed?

A. My standing orders on the "Argyle" is and I have it on the night order book, my orders is to the officers on the bridge to see the lookout is well kept and watch the course that was made; to keep well clear of anything they should happen to meet, and not to be afraid to order the course to get clear of it and call me at any time it should happen to get foggy or not clear weather and let me know at once.

Q. What were your orders in respect to calling you when they saw lights?

A. In seeing lights I never gave any orders as the officer on the bridge was always competent to pass ships without instructions.

Q. So you had no standing orders?

A. My standing orders [99—71] was to let me know if there was anything that was worth while knowing.

Q. But you had no standing orders, Captain, with respect to being called when lights were observed?

A. That would not be very good to have a standing order because sometimes we meet lights every 10 minutes and I would have to be called every 10 minutes.

Q. You had no set orders?

A. No, sir, I had no orders in regard to any lights.

Mr. CAMPBELL.—Q. Do you refer to lights on shore or lights at sea? A. I mean to steamers.

Mr. LILLICK.—Q. What were your orders about lights?

A. I will take that back. I thought probably you

(Testimony of Richard Dickson.)

meant at sea. I want to know every time we pass one and the distance off.

The COURT.—Q. You mean lights on shore?

A. Yes, sir, all lights every time we passed them was my orders to let me know when and what the time was and distance off either by fore point bearing or by compass bearing or any other bearing we might get.

Q. When you were on the “Argyle” after this accident happened and in your room while one or both of these injured sailors were lying there and hot applications being made on their legs or injured parts of their bodies, do you remember making any statement—

Mr. CAMPBELL.—(Intg.) I do not know what he is after, but if there is a witness in the room that is going to testify to the statement I think he ought to be excluded as the others were.

Mr. LILLICK.—The only witness I know of is the Libellant [100—72] Latz and Abrahamson in the case.

Mr. CAMPBELL.—I say they ought to be excluded from the room.

Mr. LILLICK.—I would rather have them excluded.

Q. Do you remember making a statement in effect as follows—

Mr. CAMPBELL.—I shall ask that the exact language of that statement be propounded to the witness.

Mr. LILLICK.—Q. “I never had such an accident in my life. This is the first time. I was awake in bed and I got up and went to galley to get a cup of

(Testimony of Richard Dickson.)

coffee and I heard a whistle and then I went up on bridge and sung out, 'Put wheel hard astarboard, reverse your engines full speed astern.' "

A. The starboard part of it is the second time I heard of it and the engine part is the first time right here now.

The COURT.—Q. Then you never made such a statement? A. No, sir.

Mr. LILLICK.—Q. Did you give such an order to reverse after you got on the bridge?

A. She was reversed and I did not have to give those orders.

Q. And you gave no orders with reference to the wheel? A. I had no time to give any orders.

Q. In regard to the helm?

A. We were close together; we was not three ship's lengths away when I came on the bridge.

Q. How far was the "Argyle" from the "Gualala" when you got on the bridge?

A. I stated three ship's lengths I would take it to the best of my belief; of course, things is very deceiving, she might be less than that and probably a little more; of course, things is deceiving at night.

Mr. LILLICK.—That is all. [101—73]

Mr. WALL.—Q. Captain, would it have any effect on the time of the "Argyle" turning to port as inquired of you by Mr. Campbell if the engines were put full speed astern after putting the helm hard astarboard?

A. She was a right-hand drive and she would turn her bow to starboard and her stern to port; she was

(Testimony of Richard Dickson.)

turning that way always in backing.

Q. She was going ahead 8 knots?

A. She was going ahead 8 knots before we backed her.

Q. Did I understand you correctly to say on your direct examination that you heard the "Argyle" give one whistle in answer to the "Gualala's" one whistle?

A. I did.

Q. And at that time you were where, at the time you heard the "Argyle" giving this answering whistle?

A. I was down on the main deck on the aft part of the main amidship poop deck; the "Argyle" has got three decks, which is a main deck, a poop deck aft and fore-castle-head and amidship deck. I was on the aft part of the amidship deck on the port side. I was coming out of the mess-room.

Q. Do you remember giving this testimony before the inspectors reading from page 10:

"Q. You hear one whistle from the 'Argyll' in reply to the one whistle from the 'Gualala'? But you do not know whether the 'Argyll' blew him any answering signal,—to the 'Gualala'?"

"A. Not to the first one. Probably the noise around there affected my hearing it."

Do you remember giving that testimony?

A. That is what I did.

Q. Now, up there above where you said in answer to the inspector's question: [102—74]

"Where were you when the one whistle was blown? A. I was down aft in the toilet."

(Testimony of Richard Dickson.)

Now, you understood when the inspector asked you that question that he meant to find out where you were when that important signal was blown, did you not?

A. I do not think I must have; that was my location to go to when I left the deck, but in coming back from there I had a cup of coffee which I started in to take. It was clear and I saw all around.

Q. Don't you think in important matters like that of answering signals where the vessel as you see turned out to be so close and where you gave this testimony only a little more than a month after the accident that your recollection at that time would be a great deal clearer then than it is now as to where you were?

A. I am saying the same now as I did then.

Q. Read the question, Mr. Reporter.

(The Reporter reads the question.)

A. I could not state anything else now than what I did then, and I could not state anything then than what I am doing now.

Q. How is it as to your recollection?

A. My recollection is the same now as it was then. I am not positive of the whistles, but there was whistles blown.

Redirect Examination.

Mr. CAMPBELL.—Q. Just what do you mean by stating you are not positive as to the whistles; is there any uncertainty in your mind as to one whistle being blown by the "Gualala" and one answer by the "Argyle"?

(Testimony of Richard Dickson.)

A. He may have blown four whistles and he may have blown three, but when I heard the whistles I was in such proximity [103—75] I did not pay much attention to anything else and when a man will hear like that he forgets it in a moment which I did then.

Mr. WALL.—Q. What did you mean in your answer given to this question: The question was put to you: “You hear one whistle from the ‘Argyll’ in reply to the one whistle from the ‘Gualala’? But you do not know whether the ‘Argyll’ blew him any answering signal,—to the ‘Gualala’”? and your answer, “Not to the first one.” What did you mean by that?

A. That is a question there that I certainly do not remember myself.

Mr. CAMPBELL.—Mr. Wall, the fact of this copy of the testimony you are reading from, is it the correct statement of the record this man made before the inspectors and taken down by some person?

Mr. WALL.—He says he gave that testimony.

The WITNESS.—I remember giving some kind of testimony of that kind.

Mr. WALL.—It is for the witness to say whether he knows what he meant.

Q. You heard the “Gualala’s” whistle?

A. I did.

Q. But you did not hear that, your one whistle clearly and distinctly so as to know whether it was an answering signal to the “Gualala’s”?

A. We heard one and after that is the signals I am not clear of.

(Testimony of Richard Dickson.)

Q. Do you remember saying after the answer, "not to the first one," "probably the noise around there affected my hearing it." That is, the whole answer being, "Not to the first one. Probably the noise around there affected my hearing it." Do you remember that? [104—76]

A. I might have said so.

Q. Don't you remember testifying something to that effect before the inspectors?

A. I remember testifying something to that effect.

Q. Is there still something in your mind that you separate those whistles so that you heard the "Argyle's" one whistle answering signal to the "Gualala's"? A. She answered the "Gualala's."

Mr. CAMPBELL.—I do not understand that there is any dispute in this case against the "Argyle's" blowing one whistle answering the "Gualala's" whistle.

Mr. WALL.—I am finding out the captain's recollection of all these things. I do not question they blew the one whistle.

Mr. HOGEVOLL.—I would like to call that medical man at this time.

[Testimony of Thomas William Connolly, for Libelant.]

THOMAS WILLIAM CONNOLLY, called for the libelant, sworn.

Mr. HOGEVOLL.—Will you admit the qualification of the doctor?

Mr. LILLICK.—Yes.

Mr. HOGEVOLL.—Q. State your name, Doctor.

(Testimony of Thomas William Connolly.)

A. Dr. Thomas William Connolly.

Q. Have you made an examination, Doctor, and taken an X-ray picture of Mr. Abrahamson, part of his body? A. Yes, sir, I have.

Q. I will hand you certain X-ray pictures, Doctor, and I will ask you to state to the Court what you found.

A. This picture is taken of the knee-joint and I found from [105—77] my examination of the X-ray picture and also from the examination of the joint and by manipulation that an ankylosis exists, limiting the action of the joint to about one-third of its normal action. That X-ray picture I took myself, and I have also here an X-ray picture of the foot, the same leg, which shows—there are three pictures; this was taken at St. Joseph's Hospital, and it shows, I might also state from the X-ray examination of the knee, it also shows that the head of the tibia, which is the large bone of the leg, had been fractured, but union had taken place in here and in the foot the cuboid bone and the external cuneiform bone and the head of the fifth metatarsal bone were fractured and healed *en masse* practically so as to limit motion in that part of the foot. That was practically mashed in such a manner as the union took place *en masse*; that is, the bones were crushed apparently from the effect of the bruise. There was a fracture of the second terminal phalanx of the second toe. The union took place with partial dislocation. It also gave evidence of scars showing there had been suppuration in the foot, which I was

(Testimony of Thomas William Connolly.)

told had been of a gangrenous nature.

Q. What, doctor, have you got to say as to whether or not that condition is permanent?

A. Well, the condition of the knee will be very likely permanent; after the time that has elapsed I believe about a year's time, and there is not the full motion by that time, it has been my experience that the limitation will be permanent, and from my X-ray examination of the foot the injury will be permanent; there is no question about that, because the bones are crushed in such manner and the union [106—78] took place in such a manner that the motion will be limited. There is no motion practically where the bones joined in such a manner; there is no motion of the bones.

Q. What would you say as to whether or not his knee will be stiff permanently?

A. Yes, sir, I believe it will.

Q. Anything else?

A. He certainly will not be able to use his foot in the same manner. He has lost several toes on the same foot, and he will not be able to have the same amount of use of the foot.

Q. Will he be able any more to follow that occupation of a sailor climbing ropes?

Mr. CAMPBELL.—Objected to unless the doctor knows the duties of a seaman, and what they are.

A. I do not know the duties of a sailor on a merchant ship. I know what they are from my connection in the naval service, from seeing men do it. I do not know what the qualifications upon merchant

(Testimony of Thomas William Connolly.)

ships are; I am only speaking from the naval service. I think he will be able to perform some of the duties, but certainly if he has to go up rigging and so forth, certainly his activity will be limited. He certainly will not have the same footing as he had before; there is no question about that.

Cross-examination.

Mr. CAMPBELL.—Q. When did you see him after he was injured?

A. I had not seen him until about a month ago.

Q. You do not know anything about the condition of his foot when he first came ashore?

A. No, sir; he was simply sent to me for examination as to the [107—79] character of the injury that existed.

Q. Are you prepared to say that trephining would have left him in better condition?

A. I have seen the X-ray plate taken at the time of the accident, and I consider that the man is very fortunate to have a leg at all. From the X-ray plate I think he has had excellent treatment; that is, in comparison with the pictures that were taken right after the accident and those that were taken now.

Q. How soon were those pictures taken after the accident? A. I could not say.

Q. What you mean to say, then, about his present condition is that it is good as compared with the condition shown by the first X-ray plates?

A. Exactly.

Q. As far as performing the duties of seaman are

(Testimony of Thomas William Connolly.)

concerned, he would be limited only in his ability to climb ropes and to use that foot in climbing?

A. Of course, a man having ankylosis, in that condition he has not got the flexibility of the knee and foot. I do not know all the duties a sailor is called upon to perform, but certainly a man will be limited in his occupation with the character of injury he has, and will not be able to perform his work as readily as before the injury.

Q. The knee is simply stiff? A. Yes, sir.

Mr. REDMAN.—Q. What is the cause of that ankylosis condition you speak of?

A. It is due to this: It is very likely a bony ankylosis or fibrous ankylosis of the knee-joint; it is the fracture of the head of the tibia and took place right in the joint proper, and the head of the tibia rests closer to the head of [108—80] the femur, which is the large bone of the thigh.

Q. Does that ankylosis show on the X-ray?

A. Yes, sir.

Q. Do you know where the other X-rays are?

A. Yes, sir; the gentleman had them in his possession when he showed them to me.

Q. Have you got them?

Mr. HOGEVOLL.—I have them. At this time I offer them all in evidence and ask that they be marked for identification.

(The pictures are marked for identification.)

Q. Who was the surgeon or physician who attended him originally? A. Dr. Wymore.

Q. You examined him about a month ago for the

(Testimony of Thomas William Connolly.)

purpose of testifying here? A. Yes, sir.

Q. Would not this ankylosis condition improve with time in the use of his leg?

A. I doubt that if it has not done better than it has in this time; I doubt it.

Q. Do you know whether in the year gone by there has been an improvement?

A. I am told—I believe there has been some, from what he said.

Q. As a rule, ankylosis condition improves as time goes on, does it not?

A. If it is fibrous, but not bony ankylosis.

Q. How do you determine?

A. From the inspection of the X-ray.

Q. Does that show this bony ankylosis?

A. It shows by the difference in the shadow.

Q. Does it show it in this way?

A. Of course, when we speak that way it shows that the bone—yes, I would say yes, it shows that in this case.

Q. Who took the X-ray picture?

A. I took the picture of it myself, and the others were taken at St. Joseph's Hospital. [109—81]

Q. Is there any shortening of his leg, Doctor?

A. I believe not; I did not measure him for that.

Mr. CAMPBELL.—Q. How soon after the accident would you say the first X-ray picture was taken?

A. That I could not tell; I did not see them.

Q. From your examination of the photographs?

A. I should say it was taken very shortly after.

Q. In those photographs the condition of the foot

(Testimony of Thomas William Connolly.)
is shown to be healed?

A. No, sir; the first photograph that I saw showed that the union had not taken place, but I believe he had an X-ray taken in the Marine Hospital after the healing had taken place; I believe so, I am not positive as to that. He was treated at the Marine Hospital after he left Dr. Wymore, but they would not let him take the photographs. They kept them as records.

[Testimony of John Hansen, for Claimant.]

JOHN HANSEN, called for the claimant, sworn.

Mr. CAMPBELL.—Q. How old are you, Mr. Hansen? A. 22.

Q. What is your business? A. I am a sailor.

Q. How long have you been going to sea?

A. For seven years.

Q. Were you on the “Argyle” at the time of her collision with the “Gualala”? A. Yes, sir.

Q. How long had you been a part of her crew at that time? A. Seven months.

Q. On what vessel are you now working?

A. On the “Rose City.”

Q. What is she? A. She is a passenger steamer.

Q. Running to Portland? A. Yes, sir. [110—82]

Q. In what capacity were you a member of the crew of the “Argyle”?

A. I was quartermaster and stationman.

Q. Where were you at the time of the collision?

A. I was on the forecastle, forecastle-head.

(Testimony of John Hansen.)

Q. Can you show me on the photograph where you were?

A. Yes, sir; I was standing there right on the fore part; right there (pointing).

Q. Right there? A. Yes, sir.

Q. Mark it with the letter A?

A. Yes, sir, on the starboard side.

Q. On the starboard side? A. Yes, sir.

Q. What time did you go on the lookout?

A. 12 o'clock.

Q. What kind of weather was there at the time of the collision?

A. Well, it was a fog bank, misty, and then clear on the port side a while and foggy on the starboard side; you could not very well see the horizon.

Q. Fog around the vessel or fog bank in the distance? A. Fog bank in the distance.

Q. Did you at any time see the "Gualala"?

A. Yes, sir.

Q. What did you first see of her; about where was she?

A. I saw her about between a point and a half and two points on the starboard bow; I saw a light.

Q. What light did you see first?

A. Masthead light.

Q. What is that light? A. White light.

Q. Bright light? A. Yes, sir.

Q. Where were you standing at the time?

A. On the starboard side of the fore-castle-head near the anchor.

Q. Upon the eye? A. Yes, sir.

(Testimony of John Hansen.)

Q. What next did you see of the "Gualala"?

A. A green light. [111—83]

Q. Where did that bear?

A. A point and a half or two points on the starboard bow.

Q. Did you at any time report any lights to the bridge? A. Yes, sir.

Q. What report did you make?

A. I reported her light on the starboard bow and immediately after a green light.

Q. Who was on the bridge?

A. Mr. McAlpine, the third officer.

Q. What, if anything, did the "Gualala" do after you had reported her green light?

A. She blew one whistle.

Q. And was there any answering whistle from the "Argyle"? A. Yes, sir.

Q. What was it? A. One whistle.

Q. Did you continue to see the green light of the "Gualala"?

A. Yes, sir, I saw a green light for a little while.

The COURT.—Q. You mean after the whistle?

A. Yes, sir, a second afterwards.

Mr. CAMPBELL.—Q. Did you see any other light of the "Gualala"? A. Yes, sir.

Q. What one?

A. I saw a red and green light and masthead light, all three at the same time.

Q. What did you see first? A. Red light.

Q. Did she show her green light? A. Yes, sir.

Q. How soon did you see the red and green light

(Testimony of John Hansen.)

together after the one whistle?

A. It was just a few moments.

Q. What time compared with your one whistle would you say that you saw the red light alone?

A. It was just a moment or so afterwards; a few moments afterwards; I could not tell for sure.

Q. In which direction was the "Gualala" going at the time [112—84] of the collision?

A. Well, she was approaching us, sir.

Q. Which way was she going in respect to the course of your compass?

A. She was coming down the coast.

Q. What was her direction with respect to the course of your vessel?

A. She was coming about a point and a half or two points on the starboard bow.

Q. Would that make her parallel with your course? A. Not quite parallel; pretty near.

Q. What position did the two vessels come together?

A. We struck her on the aft part of the forecandle-head.

Q. How were the two vessels heading at the time?

A. They were heading, the "Argyle" heading north and the "Gualala" came this way.

Q. How near was it to a head-on collision, in your judgment?

A. To a head-on collision, just an instant, a second or so to a head-on collision.

Q. Did you hear any whistles on the "Argyle" after the one whistle? A. Yes, sir.

(Testimony of John Hansen.)

Q. What one? A. Three whistles, sir.

Q. How soon did they come after the one whistle?

A. Well, it was just a few seconds afterwards.

Q. Could you tell from your vessel whether the
“Gualala’s” engines had been reversed?

A. No, sir, I could not tell that.

Q. After you first saw the light of the “Gualala”
did you continue to watch it, or not? A. Yes, sir.

Cross-examination.

Mr. LILLICK.—Q. How many times did you re-
port the lights of the “Gualala” to the officer on the
bridge on the “Argyle”? A. Twice. [113—85]

Q. And when was that?

A. Well, it was just before the collision.

Q. Just before the collision?

A. Yes, sir, as soon as I saw her.

Q. And you saw her masthead light first?

A. Yes, sir.

Q. And you reported that to the officer on the
bridge? A. Yes, sir.

Q. And then you saw her green light come on?

A. Yes, sir.

Q. And you reported that to the bridge?

A. Yes, sir.

Q. And then, as I understand your testimony, you
saw her red and green light together?

A. I saw her green light and then I saw when she
turned after she blew one whistle and turned.

Q. Did you see that red light and green light to-
gether? A. Yes, sir.

Q. Are you quite sure about that? A. Yes, sir.

(Testimony of John Hansen.)

Q. You made no report about that to the officer on the bridge?

A. No, sir, I did not make no report. I made no report to the officer on the bridge about that.

Q. You did not say anything about that?

A. No, sir.

Q. From then on you did not say anything more about the lights of the "Gualala"? A. That is all.

Q. You stood on the forecastle-head there up to the time the two boats came together? A. Yes, sir.

Q. How long was it from the time you first saw that light until the two boats hit each other?

A. It was about two or three minutes.

Q. Why did you not report to the officer on the bridge that you saw the red and green light together?

A. It is not my business to report that.

Q. It is not your business to report that?

A. I did not do [114—80] it, anyway.

Q. How long did you see the red and green lights together; how long was it that you saw both of those lights? A. It was just an instant.

Q. Just an instant? A. Yes, sir.

Q. Do you remember testifying before the United States Inspectors, Mr. Hansen? A. Yes, sir.

Q. I am reading from page 12. Do you remember answering the question asked you then as follows:

"A. She showed the red light when she blew one whistle; that was about an instant afterwards.

"Q. She had not blown her one whistle until the red light came up? A. Yes, sir.

(Testimony of John Hansen.)

“Q. Was there any time during the interim when both lights showed to you?

“A. No, sir, no time at all.”

Do you remember that testimony?

A. Well, it is quite a while ago and I cannot recall everything.

Q. Your memory was much clearer then than it is now? A. Yes, sir.

Q. It was only about a month and a half after the collision? A. Yes, sir.

Q. Then you think as a matter of fact you did not see that red light and green light together?

A. Yes, sir, when she turned I saw it.

Q. But you testified before the Inspectors that you did not see the red and green light together.

Mr. CAMPBELL.—Will you be fair to all of us and read on page 11 where he did testify to that.

Mr. LILLICK.—Where is it?

Mr. CAMPBELL.—“Q. Do you know whether the ‘Gualala’ [115—87] altered her course?

A. I suppose she must have done it. I saw her green light first and then her red light afterwards.”

Mr. LILLICK.—That is what he testified to before, that he did not at any time see her red light and green light together. That is what he testified to before the Inspectors that he saw her green light and then afterwards saw her red light.

Q. In this testimony what you said at that time was fresh in your mind. What do you think about having seen that red light and that green light together? A. What do I understand about it?

(Testimony of John Hansen.)

Q. Yes. Don't you think you saw that red and green light together? A. Yes, sir.

Q. Did you have any reason for not telling the inspector you did?

A. No, sir, no reason; I don't recall being asked the question.

Q. You were telling the truth when you were testifying before the Inspectors?

A. I always tell the truth.

Q. You always tell the truth? A. Yes, sir.

Q. Your memory was fresh and recollection good as to what happened at the time of the collision when this examination was held before the Inspectors?

A. Yes, sir.

Q. Your recollection was then better than it is now? A. I think so.

Q. Don't you think you did not see the green light and red light together?

A. No, sir, I remember I saw the green light and red light together.

Q. You do? A. Yes, sir.

Q. How far away, Mr. Hansen, was the "Gualala" from the [116—88] "Argyle" when you first saw her?

A. My recollection is she was about three or four ship's lengths.

Q. When you first saw her lights?

A. To my imagination; I could not tell for sure.

Q. Three or four ship's lengths away?

A. Yes, sir.

Q. Do you know how far you can see a bright light,

(Testimony of John Hansen.)

a masthead light on the ocean on a ship 20 or 30 feet above the water line? A. About 10 miles.

Q. You are looking out from your post as lookout on the forecastle on the "Argyle" all the time, were you? A. Yes, sir.

Q. You do not mean for us to believe that you did not see the "Gualala" until she came within two or three ship's lengths from you?

A. That is all I saw.

Q. You first saw that bright light out there of the "Gualala's" about four ship's lengths away?

A. Yes, sir, and that I cannot say for sure.

Q. That would be about 1200 feet?

A. My own ship's length was 320 feet of the "Argyle."

Q. And three times that would be about 1200 feet away? A. Somewhere around that.

Q. How far away was it when she blew that one whistle? A. It was just after I had seen her.

Q. Just after you saw her? A. Yes, sir.

Q. How much nearer to you do you think she had come then after you saw her?

A. It was just an instant afterwards.

Q. Did she come a ship's length more towards you? A. Yes, sir, I believe she did.

Q. Then she was about three ship's lengths away from you when she blew that one whistle?

A. Yes, sir. [117—89]

Q. During the time that you were watching the lights of the "Gualala" from your position on the lookout did she change her bearing at all to you?

(Testimony of John Hansen.)

A. Well, it seemed to.

Q. It seemed to? A. Yes, sir.

Q. Did that bearing change rapidly?

A. Not very rapidly; not after she had blowed the whistle.

Q. Not after she had blown the whistle?

A. Not before she had.

Q. Not before or not after? A. Not until.

Q. Which way did it go, in or out; which way did the bearing change, in or out? A. Out.

Q. You mean to your starboard bow?

A. To my port.

Q. To your port bow? A. Yes, sir.

Q. Did it widen the distance between your two vessels or did it decrease the distance, that change of bearing? A. Decreased it; it gets smaller.

Q. Made it more? A. Made it less.

Q. Didn't you know then there was danger of the two vessels coming together? A. Yes, sir.

Q. Did you make a report to the officer on the bridge about it?

A. I told him she is showing her green light.

Q. That she is showing her green light?

A. Yes, sir.

Q. Then that is before you had seen the red light?

A. Yes.

Q. That was before you had seen the red light?

A. Yes, sir.

Q. And when you saw the green light you still thought there was danger of running into each other?

A. Not until she altered her course.

(Testimony of John Hansen.)

Q. It was after that you said you told the officer on the bridge?

The COURT.—He did not say that. He said he only reported [118—90] two lights, the masthead light and green light.

Mr. LILLICK.—Q. How long do you think it was from the time the whistle, Mr. Hansen, until the time the two boats came together?

A. It seemed about a couple of minutes; somewhere around there. I would not say for sure, that is the way it seemed to me. I could not tell for sure.

Q. Now, do I understand you to say that you saw that red light just after he blew the whistle, or just before he blew the whistle. I am talking about the "Gualala"? A. After she blew the whistle.

Q. After she blew the whistle you saw that red light? A. Yes, sir.

Q. And how long was that before the two boats came together?

A. Oh, it was just a matter of a few seconds, or so.

Q. A matter of a few seconds?

A. Well, about half a minute or so.

Mr. LILLICK.—That is all.

Mr. HOGEVOLL.—Q. How far apart were the ships when you saw the two lights together?

A. The two lights do you mean?

Q. The lights on the "Gualala," the red light and green light?

A. They were about a couple of ship's lengths, that is about all.

Mr. WALL.—Q. Hansen, did you say you also

(Testimony of John Hansen.)

were quartermaster? A. Yes, sir.

Q. And how long have you been going as lookout-man on different ships?

A. I have been doing it for seven years.

Q. Most of the time you have been occupied going to sea your position has been that of a lookout among other things?

A. A sailor in a ship, they go lookout too. [119—91]

Q. All the time you have been going to sea during the last seven years you have been doing a great deal of lookout duty during that time? A. Yes, sir.

Q. You have got good eyesight? A. Yes, sir. .

Q. Nobody ever found any fault with your eyesight at all? A. No, sir.

Q. You say you know the length of the "Argyle"?

A. Yes, sir.

Q. How long did you say she was?

A. She is around 325 feet; somewhere around there.

Q. And you are perfectly well satisfied in your own mind that at the time you saw the masthead light she was about four of the "Argyle's" ship-lengths away from you?

A. That is the way I calculated it.

Q. You have had a great deal of experience calculating distances at sea? A. Not much.

Q. In going as lookout-man don't you have to report the lights away sometimes, the distance they are off?

A. No, sir, not the distance they are off, but the bearing.

(Testimony of John Hansen.)

Q. You would not say she was more than four ship's lengths off at the time you first saw the mast-head light, would you?

A. That I could not tell for sure; that is my own imagination of what I saw, when I saw it the first time.

Q. That is your own judgment?

A. Yes, sir, that is my own judgment.

Q. From that time on did the whole thing up to the time of the collision—from the time you saw the red light up to the time of the collision, did the whole thing happen rapidly one thing after the other or a long time between them?

A. Not a long time between them.

Q. The whole thing happened rapidly, one thing after another [120—92] after you saw the mast-head light? A. Yes, sir.

Q. You did not think it was necessary to report to the officer in charge of the deck the fact that you had seen the two lights together, if you did see them together. You did not think it necessary to report that to the officer of the deck?

A. I reported a masthead light and a green light.

Q. You did not think it was necessary to report when you saw the two lights together, the red light and green light, you did not think it was necessary to report that to the officer of the deck?

A. No, sir, because she had blown one whistle.

Q. They had blown one whistle? A. Yes, sir.

Q. You did not think it necessary to report to the officer of the deck that you had dropped the

(Testimony of John Hansen.)

“Gualala’s” green light and picked up the red light; you did not think it was necessary to report that to the officer of the deck?

A. I did not exactly think of it because I was watching the “Gualala.”

Q. You did not think of it? A. No, sir.

Mr. WALL.—That is all.

Mr. CAMPBELL.—With the consent of the Court I would like to recall Captain Dickson to ask him a question I failed to ask him.

[Testimony of Richard Dickson, for Claimant (Recalled).]

RICHARD DICKSON, recalled.

Mr. CAMPBELL.—Q. I hand you the official log of the ship and ask you if you can explain to the Court the time and circumstance under which the entry on the right-hand page reading, answered with one blast, gave three blasts helm [121—93] hard to port. I would like to have you explain the time and circumstances under which that log was made.

A. After the accident happened and we had got the “Gualala’s” crew on board of our ship and we brought on board the two men that was hurt I made my mind up to get to San Francisco as quick as I could so they could get medical treatment because we had nobody on board the ship, and in the excitement it seems this was omitted to put in the pilot-house log-book by the third officer about the three whistles and the wheel hard to port, that was omitted. The chief officer and I were busy going around the ship from the time we left the “Gualala” wreck until

(Testimony of Richard Dickson.)

we arrived in San Francisco Bay and he entered it in his log-book which he used to enter in every day, at the end of the day I would take it to read it.

Q. You copy the bridge log into that book?

A. We enter the book into the mate's log every 24 hours, at the end of the day I always take it to my room and examine it to find out whether it is correct for I signed it every page, every page is signed by me every day. In looking over it when I came to San Francisco Bay I saw that was omitted and I asked the chief officer to enter that on the side so he did and here it is.

Q. After you arrived in port what did you do with that log-book? A. This log-book there?

Q. Yes.

A. I took the log-book up to your office.

Q. My office? A. Yes, sir, right straight up.

Q. From my office where did you take it?

A. That is the last I saw of it—no, then I took it to the United States Inspectors' office.

Q. The United States Inspectors' office?

A. Of Hulls and [122—94] Boilers.

Q. Did you deliver it to the Inspectors?

A. Yes, sir.

Q. I will ask you whether or not at the time you handed this book to the Inspectors there was upon the log the underscoring with the pencil and the question mark in pencil the portion which I first read to you, answered with one blast, gave three blasts helm hard to port.

A. The first I saw of that is practically now. I do

(Testimony of Richard Dickson.)

not know anything about that pencil there. It was not there when I took it up to the Inspectors' office; that has been put there since.

Cross-examination.

Mr. LILLICK.—Q. What time was it when that *entered* was made?

A. That was made somewhere around between two or three o'clock in the afternoon in San Francisco Bay, or if I remember correctly it was made at, right outside the Union Street Wharf at the end of the dock.

Q. Was there anything written in pencil before?

A. No, sir.

Q. It was not copied there? A. No, sir.

Q. Did you see it written yourself?

A. I was right there with the first officer and I was the one who asked him to enter it.

Q. Did you ask the third officer at the time whether or not he gave three blasts of his whistle?

A. I did not.

Q. You did not? A. No, sir.

Q. You just told him to enter in there?

A. I told him to enter according to what was going on.

Q. What did he say?

A. He said he blew three blasts of the whistle.

[123—95]

Q. He said he blew three blasts of the whistle?

A. Yes, sir.

Q. What else?

A. I heard a whistle blow. Of course, I was sure

(Testimony of Richard Dickson.)

it was something like that; as I say I am not sure whether it was three or four.

Q. When was that written?

A. Between the time we left the wreck of the "Gualala" and when we arrived in San Francisco Bay, between five o'clock in the morning of the 15th and two o'clock in the afternoon of the 15th, 1912.

Q. You had talked the collision over with the third officer and with the other men on the deck between the time this entry was made in the log on the boat and the time it was made in the log?

A. I have not talked it over with the third officer at all. My statement to all of them was, I called them all together and I says, this is before the Inspectors' case, "Whatever you do, tell the truth and nothing but the truth"; that is all the statement I ever said.

Q. Then after that they wrote up this log?

A. I have not seen the log-book before that.

Q. That was entered in the log-book after you came in San Francisco Bay?

A. I was too busy with my ship about that time.

Q. When you called them together and had the conversation which you told just now before the Inspectors' hearing you had a general discussion with them as to how the accident happened and how many whistles were blown and what you did and what the "Gualala" did? A. No, sir.

Q. Not when you had them all together and talked with them?

A. I never asked anything about anything; I let everybody tell their own story, that is the way I want it. [124—96]

[Testimony of Andrew Torbjorsen, for Claimant.]

ANDREW TORBJORSEN, called for the claimant, sworn.

Mr. CAMPBELL.—Q. How old are you?

A. 29.

Q. Were you a member of the “Argyle’s” crew at the time of her collision with the “Gualala”?

A. Yes, sir.

Q. What is your business? A. Seaman.

Q. You are still in the employ of the Union Oil Company? A. Yes, sir.

Q. In what capacity were you on board the “Argyle”?

A. Quartermaster at the time.

Q. Were you at the wheel at the time of the collision? A. Yes, sir.

Q. Can you show me on this photograph of the “Argyle” where the wheel was and where you stood?

A. Yes, sir.

Q. Point it out? A. Here (pointing).

Q. Is it this light stop just back of the bridge?

A. On the side of the wheel-house, on the port.

Q. How is the wheel-house—round?

A. On three angles.

Q. And you stood in the wheel-house?

A. Yes, sir, on this side. This is the port window showing here.

Q. One window on the port side and one in front and one on the starboard side? A. Yes, sir.

Q. Do I correctly mark your position with the letter I? A. Yes, sir.

Q. Did you at any time see any lights of the “Gualala”?

(Testimony of Andrew Torbjorsen.)

A. I saw the masthead light bearing about a point and a half on the starboard bow.

Q. Did you at any time see the "Gualala's" green light? A. No, sir.

Q. Did you at any time see the "Gualala's" red light? [125—97] A. Not before the collision.

Q. Did you receive any orders for the altering of your helm prior to the collision? A. Yes, sir.

Q. Who gave them to you? A. The third officer.

Q. Was he on the bridge then? A. Yes, sir.

Q. What was the order? A. Hard aport.

Q. Was the order obeyed? A. Yes, sir.

Q. Did you at any time receive any orders from the third officer or from the master or any other person to hard astarboard your helm? A. No, sir.

Q. Do you recall the master coming out of the bridge about the time of the collision?

A. Yes, sir.

Q. Did he give any orders to you?

A. No, sir, not to me.

Q. Do you know whether any orders were given by the third officer to the engine-room?

A. No, sir, I do not.

Q. What course were you steering at the time of the collision? A. Northwest $\frac{1}{4}$ west.

Q. Did you hear any whistles given by the "Argyle" after the one whistle which she blew in answer to the first one from the "Gualala"?

A. There was three whistles blown shortly afterwards.

Q. What time elapsed between the one whistle and

(Testimony of Andrew Torbjorsen.)

the three whistles?

A. About one minute, I guess.

Q. At what time with reference to the one whistle did you receive your order to hard aport your helm?

A. Immediately after the one whistle.

Q. You say that you did not see the "Gualala's" red light before the collision; did you see it after the collision?

A. Just after the collision. [126—98]

Q. How soon after the collision?

A. Just about the time we struck her.

Q. Where did the "Gualala" lay with reference to your vessel? A. Right across our boat.

Q. Which side of the "Gualala" towards you?

A. The port side.

Cross-examination.

Mr. LILLICK.—Q. How long have you been going to sea? A. 14 years.

Q. Have you ever had occasion to hear when a man is ordered to put his wheel hard aport thinking about something else he puts it hard astarboard instead of hard aport? A. No, sir.

Q. Never heard of that being done? A. No, sir.

Q. You testified to Mr. Campbell that no change of your course had been made before the collision except hard aport. Do you remember changing the course a little to port before the order to hard aport was given you, changing your course a little to port?

A. No, sir, I do not remember.

Q. You do not remember? A. No, sir.

Q. Do you remember the third officer told you not

(Testimony of Andrew Torbjorsen.)

to go any closer to the "Gualala"?

A. I cannot think of that.

Q. You do not remember?

A. No, sir, I do not remember.

Q. Do you know whether or not you did change your course any to port?

A. No, sir, I did not do it at all.

Q. You did not do it at all?

A. I kept on a straight course.

Q. How long do you think it was, Mr. Torbjorsen, from the time that the first whistle was blown until the time of the collision—I mean the first whistle from the "Gualala"? [127—99]

A. About a minute.

Q. Did you hear the lookout report the lights of the "Gualala" when they were first reported?

A. Yes, sir.

Q. How long was that before the whistle was blown? A. About two or three minutes.

Q. It was at that time that you looked out yourself and saw the lights of the "Gualala"? A. Yes, sir.

Q. Did you look at them occasionally after that?

A. No, sir; I did not.

Q. How far away from Mr. McAlpine was it from where you were standing—how many feet is it from where you were to where he is on the bridge?

A. About 10 or 15 feet.

Q. Did you hear any conversation between the captain and the mate after the captain came up on the bridge? A. No, sir.

Mr. WALL.—Q. What sort of a course were you

(Testimony of Andrew Torbjorsen.)

making, was the weather smooth so that you were making a good straight course?

A. Making a good, straight course.

Q. You never made any perceptible variation from your course until you got the order hard aport; is that correct? A. Yes, sir, that is correct.

Q. You did not at any time get any instructions from the officer on the bridge to keep away from that fellow and not go any closer to that fellow, referring to the "Gualala"? A. No, sir.

Mr. HOGEVOLL.—Q. Can you see any reason why you could not see the "Gualala" 10 miles away or five miles away?

A. I was not looking; I was looking at the compass.

Mr. LILLICK.—Q. Mr. Torbjorsen, when you saw the red light of the "Gualala" after the collision on the bow of the "Argyle" was it on the port or starboard? [128—100] A. Starboard bow.

Q. On your starboard bow? A. Yes, sir.

Q. Does the "Argyle" answer her helm quickly?

A. Yes, sir, pretty quickly; she starts slow.

Q. Starting slow, but then after she starts quickly?

A. Yes, sir.

Mr. CAMPBELL.—Q. How does she answer her helm when she is loaded?

A. She answers slow at the start.

Mr. WALL.—Q. Is she a twin-screw vessel or a single screw vessel? A. Single screw.

[Testimony of Benjamin Samford, for Claimant.]

BENJAMIN SAMFORD, called for the claimant, sworn.

Mr. CAMPBELL.—Q. What is your business?

A. Engineer.

Q. Where are you employed at the present time?

A. Not employed.

Q. Were you on board the “Argyle” at the time of her collision with the “Gualala”? A. Yes, sir.

Q. Who was in charge of her engines?

A. I was in charge of her engines at the time.

Q. Did you at any time receive any bells from the bridge prior to the collision?

A. Yes, sir, I received a full speed astern bell.

Q. What was the first bell you received?

A. Full speed astern.

Q. What did you receive after that? A. Stop.

Q. Did you make any notes in the log?

A. Yes, sir.

Q. Where did you make your entry?

A. I made them first on the bulkhead and then copied them off on the log slate.

Q. What did you do with the log slate?

A. I handed it to [129—101] the chief engineer.

Q. I will ask you whether or not you know the book I have in my hand is the log-book of the chief engineer. Do you know whether it is the chief engineer’s log-book of the “Argyle”?

A. I cannot say for sure,—oh, yes, that is the log-book of the steamer “Argyle” all right.

(Testimony of Benjamin Samford.)

Q. Do you know the chief engineer's signature?

A. Yes, sir.

Q. Is this his signature down in the right-hand corner? A. Yes, sir.

Cross-examination.

Mr. WALL.—Did you offer it in evidence?

Mr. CAMPBELL.—I have not the right; I will be glad to have you put it in.

Mr. LILLICK.—Q. You wrote that yourself did you when you came off watch?

A. I wrote it on the log slate.

Q. Who wrote it in this book?

A. I presume the chief engineer did.

Q. Your log slate is a blackboard which you wrote it on with a piece of chalk?

A. No, sir, I first wrote it on the bulkhead with a piece of chalk to save time and then copied it on the log slate.

Q. Then put it in the log? A. Yes, sir.

Q. From that log it was copied into the chief engineer's log? A. Yes, sir.

Q. Do you know how long after you wrote up your log this was written up? A. No, sir.

The COURT.—Q. Do I understand you wrote up the log-book yourself? A. No, sir, the log slate.

Q. The only entry you made was on the bulkhead and log slate? A. Yes, sir. [130—102]

Mr. LILLICK.—Q. How long was it between your full speed astern bell and stop bell?

A. About two minutes.

Q. Could you tell when the two vessels came to-

(Testimony of Benjamin Samford.)

gether, was there any appreciable shock on the "Argyle"? A. No, sir, I did not hear it.

Q. You do not know when the two vessels came together? A. No, sir, I do not.

Mr. WALL.—Q. You have no idea when these entries were made in this log-book? A. No, sir.

Mr. CAMPBELL.—Q. What is the custom on board your vessel as to the keeping of the engine-room log?

A. The engineer in charge at first writes it down on the slate and when the slate was completed every day we hand it to the chief engineer, who copies it into the book.

Q. Is that your regular course? A. Yes, sir.

Mr. LILLICK.—I will read the entry in the record from the Engineer's Log-Book.

"Astern full speed 3:06 stopped and ahead slow 3:08. Stopped 3:09. We having been in collision in that time with 'Gualala.' Left 5:02 with her crew for San Francisco."

(A recess is here taken until 2 P. M.) [131—103]

AFTERNOON SESSION.

[Testimony of George Curtis, for Claimant.]

GEORGE CURTIS, called for the claimant, sworn.

Mr. CAMPBELL.—Q. Mr. Curtis, were you chief officer of the "Argyle" at the time of her collision with the "Gualala"? A. Yes, sir, I was.

Q. Do you hold a master's certificate?

A. I do; yes, sir.

Q. Are you at present in the employ of the Union

(Testimony of George Curtis.)

Oil Company? A. Yes, sir.

Q. Are you master of any ship at the present time?

A. Yes, sir, master of the "Santa Rita."

Q. Is the "Santa Rita" a larger or a smaller vessel than the "Argyle"?

A. The "Santa Rita" is a larger vessel.

Q. Where were you at the time of the collision?

A. I was sleeping.

Q. So you know nothing of the circumstances leading up to it, do you?

A. Nothing of the collision, whatsoever.

Q. After the collision did you write up your log-book? A. Straight from the pilot-house log.

Q. Who writes the chief officer's log on the ship?

A. The chief officer.

Q. To whom does he customarily submit it for further signature? A. The captain.

Q. Is that the usual course of keeping the chief officer's log?

A. That is the usual course on board ship.

Q. Is that true on all ships as well as on the "Argyle"?

A. I never sailed on anything except American ships, I have been to sea for 37 years, and I have never seen anything different on any ship I have ever sailed on. [132—104]

Q. I will hand you the log which has been marked Respondent's Exhibit 3 and ask you if that is the chief officer's log of the "Argyle."

A. Yes, that is all in my writing.

Q. Turning to the entries under date of October

(Testimony of George Curtis.)

15, the date on which the collision took place, I will ask you to explain to the Court when and from what you made the entries which appear on the right-hand page.

A. I spoke to Captain Dickson before I wrote the log and he said I should copy it exactly as it was in the pilot-house log-book, and I wrote this on the right here, and he told me afterwards that I should have put it in about the blowing of three blasts of the whistles and backing the ship, and so I wrote it here as it is not right to erase anything once written in the log-book at any time.

Q. Did the matter which appears on the middle of the page "Answered with one blast" and so forth, did that appear in the bridge log?

A. No, sir, it did not.

Q. Just that which is in the right-hand column?

A. In the right-hand column. I put that in there on the instructions of Captain Dickson.

Q. How long have you been on the "Argyle"?

A. I have been on her two or three different times. It is three years on the 1st of December since I first joined her with Captain Dickson; I was away sick, and I was chief officer of another boat for awhile and then I joined her again.

Q. Now, I want to ask you this question; it has reference to the chart which is on the blackboard, and which is a copy of the one offered in evidence by the "Gualala."

Assuming that the "Gualala," a steam schooner, 120 feet long, loaded, while coming down the coast

(Testimony of George Curtis.)

below Point Arena on a [133—105] southeast course, making 8 knots per hour, observed, a point and a half on her port bow, the red light of the “Argyle,” a steamship 320 feet long, loaded, making 8 knots per hour, and that thereupon, the “Gualala” ported her helm and payed off one and a half points in half a minute, and then hard aported for 25 or 30 seconds, and then stopped and reversed for a minute, but, in the meantime, had swung $4\frac{1}{2}$ points more so that she was then on a south southwest course and still going ahead a mile an hour under a hard aport helm, would it, in your judgment, have been possible for the “Argyle” in the minute following the stopping and reversing of the “Gualala” to have so changed her course to port as to have first shown her green light to the “Gualala” when the latter stopped and reversed, and then to have struck the “Gualala” practically bow-on when the latter was headed south southwest?

A. That is the most absurd thing I have ever heard of.

Q. In your judgment could it have been done?

A. No, sir, unless the “Gualala” put her wheel hard astarboard and tried to get under her.

Q. I am asking you whether it would be possible to produce a collision by these maneuvers?

A. It could not unless the “Argyle” had put her helm hard astarboard and tried to get under her.

Q. In which way would that swing her—to port?

A. To shore.

Q. To strike the “Gualala” practically head-on,

(Testimony of George Curtis.)

when the "Gualala" was heading south southwest would any other change have to have been made in the course of the "Argyll" before her swinging to port?

A. The "Argyll" would have to deliberately put her wheel to starboard to get under his bow. [134—106]

Q. Will you listen to my question, please? If the "Argyle" had put her helm hard to starboard which way would her bow be swinging?

A. Her bow would be swinging to port but her wheel to starboard.

Q. After the "Argyle" was swinging to port under the influence of her hard to starboard helm, would it be necessary for her to again change her course in order to strike the "Gualala" practically bow-on when the latter was headed south southwest?

A. That would be according to the position of the ship somewhat, I suppose; she surely would have to keep her wheel to starboard to get to him when he ported his wheel. There is no way they could get together.

Q. If the two vessels were approaching each other from port to port and the "Gualala" ported her helm and the "Argyle" starboarded her helm, would they ever pass each other on parallel courses?

A. No, sir, not very well; one ship would have to be a good deal faster than the other.

Q. Would they ever reach a point where the two courses would be parallel, with both vessels headed the same way?

A. If they were far enough apart they would both

(Testimony of George Curtis.)

clear in a circle opposite each other.

Q. Would there be a point opposite of each when the two vessels would be headed in the same direction, and yet parallel with each other?

A. For a very short time, with helms over; they would both be swinging very fast.

Cross-examination.

Mr. LILLICK.—Q. But if during that swing, if such a swing was on and made by the “Argyle,” and the helm of the “Argyle” had been suddenly put to port, she would have turned and met the other vessel head-on, would she not?

A. In time she would; yes. [135—107]

Q. And it depends altogether upon the time that elapsed between the various changes of her course?

A. Most assuredly.

Redirect Examination.

Mr. CAMPBELL.—Q. Could the “Argyle” have changed her course to port and then back to starboard so as to meet the “Gualala” head-on in a minute’s time? A. No, sir.

[Testimony of James Dickie, for Claimant.]

JAMES DICKIE, called for the claimant, sworn.

Mr. CAMPBELL.—Q. Mr. Dickie, how old are you? A. 67 years, my next birthday.

Q. What is your business?

Mr. LILLICK.—Mr. Campbell, we will admit Mr. Dickie’s qualifications, unless you desire to prove them.

Mr. CAMPBELL.—I may state, for the benefit of

(Testimony of James Dickie.)

the Court, that Mr. Dickie has been for some 40 years the master ship-builder of the Union Iron Works and that he has during that time built many battle-ships and cruisers and merchant vessels.

Q. Did you make any examination of the "Gualala" while she was in the bay here, following the collision?

A. I made a very careful examination of her.

Q. Did you determine from that examination the angle at which the two vessels came together?

A. Very close to 30 degrees from a straight line.

Q. Have you drawn any model of the vessels, showing the angle of the cut? A. Yes.

Q. Do I hold them in my hand? A. Yes.

Q. Are those models drawn to the scale showing the comparative length of the vessels and the comparative breadth of the two vessels?

A. One-sixteenth of an inch to the foot.

Q. Both are drawn to scale?

A. Both are drawn to the same scale. [136—108]

Q. Can you show us, from placing the two models, how the two vessels came together?

A. Like that (indicating).

Q. First give the angle at which the two vessels struck.

A. There is a faint line on there marked 30 degrees, which is about the angle at which they struck. That is as near as can be figured.

Q. Do I place them correctly? Is that the angle?

A. Yes, sir, that is about the angle.

Q. Is that line, the 30 degree line extended, about

(Testimony of James Dickie.)

an extension of the center line of the "Argyle"?

A. Yes, sir.

Q. So that those two make a straight line?

A. So that those two make a straight line.

Q. How far was the first cut into the "Gualala's" side, abaft her stem?

A. 11 feet to the start of it; and the cut was 31 feet long.

Q. What was the character of the cut?

A. Just exactly to the scale drawn there, about 6 feet at this end; there is a little mark down there which shows it was a little deeper at the bottom; she evidently rolled when she struck her.

Q. Have you ever had occasion in your experience to examine damage to ships which have been in collision, and to repair the same?

A. I have examined a good many of them and repaired a good many of them.

Q. Have you ever made a study of the damage resulting, or at least the movement of vessels as indicated by the damage?

A. Yes, I have done it repeatedly.

Q. I will ask you whether or not, in your judgment, at the time of the collision the "Gualala" was crossing the "Argyle's" bow?

A. There is not any question about it.

Q. From the character of the damage what would your judgment be [137—109] as to whether prior to the collision the "Gualala" was on the "Argyle's" port bow or on her starboard bow?

A. On her starboard bow.

(Testimony of James Dickie.)

Q. Which of the two vessels do you think were going the faster at the time of the impact?

A. The "Gualala."

Q. Upon what do you base that statement?

A. Upon the shape of the cut and the way in which it was done, the only way in which it could be done.

Q. Explain that.

A. For instance, if the "Gualala" had been standing still and the "Argyle" run into her she would have gone straight in, she would not have made a cut of that character, she would have gone straight in at a very slight angle. The "Gualala" must have been going ahead crossing the bow like this to get into this cut; there is no other way in which it could be done. The "Argyle" was going ahead some, but the "Gualala" was going almost double the speed of the "Argyle" at the time of the collision.

Q. You are familiar with the "Argyle," are you?

A. I am quite familiar with her. I converted her into a tanker. I had charge of her at the Union Iron Works.

Q. In your judgment, Mr. Dickie, within what distance could the "Argyle" be stopped from full speed ahead going 8 knots? A. In about 4 minutes.

Q. Within what distance? Did you make calculations this morning as to what distance she could be stopped? A. My son and I made it together.

Q. What would be, in your judgment, the diameter of a circle within which the "Argyle" could turn completely around?

A. About 5 to 6 lengths of the ship.

(Testimony of James Dickie.)

Mr. CAMPBELL.—I will offer the two models in evidence. [138—110]

Q. Mr. Dickie, I want to propound this question to you:

Assuming that the “Gualala,” a steam schooner, 120 feet long, loaded, while coming down the coast below Point Arena on a southeast course, making 8 knots per hour, observed, a point and a half on her port bow, the red light of the “Argyle,” a steamship 320 feet long, loaded, making 8 knots per hour, and that thereupon, the “Gualala” ported her helm and payed off one and a half points in half a minute, and then hard aported for 25 or 30 seconds, and then stopped and reversed for a minute, but in the meantime, had swung $4\frac{1}{2}$ points more so that she was then on a south southwest course and still going ahead a mile an hour under a hard a port helm, would it, in your judgment, have been possible for the “Argyle,” in the minute following the stopping and reversing of the “Gualala” to have so changed her course to port as to have first shown her green light to the “Gualala” when the latter stopped and reversed, and then to have struck the “Gualala” on the angle you have shown in your models?

A. No, there was not room.

Q. Could it make that maneuver in that time?

A. In neither the time nor the distance.

Q. Through what sort of a course would the “Argyle” have to go in order to bring herself into collision under those circumstances?

A. She would have to make an S course and she

(Testimony of James Dickie.)

would be stopping during that time, which would throw the whole thing adrift.

Q. Which way would it require her helm to be put?

A. She would have to have a starboard helm first and a port helm afterwards, and she never could have done it in the distance.

Q. Could she have done it in the time?

A. She could not do it in the time or the distance.

[139—111]

Q. Could she have done it in the time that the "Gualala" was reducing her speed from 8 knots to one knot by reversing full speed astern?

A. No.

Q. Could she have done it in the time required for the "Gualala" to have changed her course from southeast to southwest? A. No.

Cross-examination.

Mr. LILLICK.—Q. Captain, do you know the construction of the "Gualala"? A. Yes.

Q. You know she has a hand steering gear?

A. I did not know she had a hand steering gear, but that does not make any difference.

Q. Would it not make a difference, Captain, as to the rapidity with which the "Gualala" would be able to change her course? A. Yes.

Q. It would not act as quickly, would it?

A. It would make a little distance, but the testimony is she did not put the rudder hard over, and it would not make any difference.

Q. Which testimony do you mean?

A. The "Gualala's" testimony.

(Testimony of James Dickie.)

Q. The answers you have given to Mr. Campbell are based somewhat upon the testimony that you have read over, that has been given you, in addition to what Mr. Campbell has asked you in his questions?

A. Yes.

Q. It would have been possible, would it not, Captain Dickie, for the "Argyle" to have gotten into the position in front of the "Gualala" in which, according to these models, you say they struck each other if when the lights of the "Gualala" were first seen the helm of the "Argyle" was put to starboard and then after that changed to port?

A. Not in the time.

Q. What do you figure the time to be? [140—112]

A. It would take the "Argyle" to stop from 8 knots about 4 minutes.

Q. Now, assuming, Captain Dickie, that the lights of the "Gualala" were seen from the "Argyle" about 4 minutes before the collision, and that at that moment the officers of the "Argyle" changed their course to port, that is, putting their helm to starboard, and ran for awhile under a starboard helm, going to port, and then changed the course of the "Argyle" to run to starboard under a port helm, would it not have been possible to have gotten her into a position in which the two vessels eventually struck?

A. No, because she would not steer when she was backing.

Q. No, she would not steer when she was backing, but going ahead as she was at the time the lights of

(Testimony of James Dickie.)

the "Gualala" were first seen, going at the speed of 8 knots an hour, and with her course changed to port, would it not have been possible for her after running awhile on her course to port and then changing and then going on the course which you say was an S to run into the "Gualala"?

A. Not in 4 minutes and do the stopping at the same time; not in 4 minutes without doing the stopping.

Q. As I understand your testimony, you believe the "Argyle" was going through the water about a knot an hour at the time of the impact?

A. That is about as near as I can figure it, and the other one was going about 2 knots.

Q. Would it not depend a great deal upon how much the course of the "Argyle" was changed during that time? A. I don't understand you.

Q. Would not the possibility of her making this S in the meantime depend a good deal upon how her helm was turned during that 4 minutes?

A. If the "Argyle" was in the position as reported from the "Gualala" it was utterly impossible in the time [141—113] to get in the position and in the direction in which the collision occurred.

Q. Are you speaking of the "Argyle" being in the position as she was reported from the "Gualala" on the port side of the "Gualala"?

A. On the port side, yes, of the "Gualala."

Q. What would have been the situation if she had been on the starboard side of the "Gualala"?

(Testimony of James Dickie.)

A. She might have made it if she had been on the starboard side.

Mr. WALL.—Q. Captain, how do you figure that it would take 4 minutes to stop the “Argyle” going 8 knots?

A. It is a very complicated subject, but it has been pretty well threshed out. The basis which I used was a paper read before the Society of Naval Architects in London, in which they figured it out; they have a method for figuring all ships out. They tested 24 ships. I sent to the British Board of Trade for a report and I got some data from them. And I sent to the Bureau in Washington and got data regarding the battleships.

Q. But it is purely a theoretical estimate, is it not, so far as the “Argyle” is concerned?

A. It is tested by practice.

Q. So far as the “Argyle” is concerned, and your figures, it is purely a theoretical estimate, is it not?

A. No, sir, it is pure mathematics.

The COURT.—Q. All you mean by that is that the experiment had never been tried on the “Argyle”?

Mr. WALL.—Q. You never personally saw that experiment tried on the “Argyle”? A. No.

The COURT.—Q. You figure it out, do you not, from the power of the ship, from the length of the ship, from its breadth and everything else taken into consideration? A. Yes, sir. [142—114]

Mr. WALL.—Q. But, of course, Captain, the individual characteristics of each ship would change that to some extent, would they not?

(Testimony of James Dickie.)

A. Not to a very great extent.

Q. No, but to some extent?

A. To some extent, slightly.

Q. And it would also depend a great deal upon the conditions of wind and weather under which the experiment was made, would it not?

A. The weather would have very little to do with it.

Q. Do you mean that if there was a heavy head sea you would not stop quicker than if there was a following sea?

A. If you were going against the wind you would stop a little quicker. If you were going with the wind the sea would make very little difference.

Q. If the "Argyle" was going 8 knots and put her helm aport and rang hard astern and went hard astern without having first got the stop bell what effect would that have on the "Argyle's" bow as to the tendency to throw it?

A. It would depend on the way the vessel was swinging; whichever way she was swinging she would keep on either with her rudder or against it.

Q. If she were swinging to starboard under a port helm would it have a tendency to accelerate the speed with which she swung to starboard or a tendency to diminish it?

A. It would make very little difference, she would just keep on swinging about the same.

Q. It would make some difference though, would it not?

A. It might make a slight difference but it would

(Testimony of James Dickie.)

vary with the rudder, whether the rudder was above the propeller or below it.

Q. Captain, when you said the "Gualala" was going ahead in the position in which you placed those models, that simply means [143—115] that in your opinion at the instant of coming together the "Gualala" was moving ahead at the speed you have indicated and the "Argyle" was moving ahead at the speed you have indicated? A. That is all.

Mr. LILLICK.—Q. Captain, Dickie, how long, in your opinion, would it have taken the "Argyle" to come to a speed of 2 knots an hour after reversing her engine slow speed astern when she was going originally at the rate of 8 knots an hour?

A. About 3 minutes; that is, roughly; it is quite a nasty thing to figure it out; it is a slow business, but roughly it is about that.

Q. Do you think it was possible for the "Argyle" to have remained in such a situation as to see the lights of the "Gualala" approaching for 4 minutes on her starboard bow, a point and a half off her starboard bow without changing her course to correspond with the course upon which the "Gualala" was going, in order to keep the lights of the "Gualala" at that same point, a point and a half off her starboard bow?

A. They would have to change the course because if they closed up the point and a half would be a different angle.

Q. In other words, if the "Gualala" when she was some distance away from the "Argyle" had changed her course to starboard and yet upon the "Argyle"

(Testimony of James Dickie.)

the lights of the "Gualala" appeared to be at the same point across the bow of the "Argyle," that is, a point and a half off her starboard bow, it must have been true that the "Argyle" made a corresponding change in her course to have kept those lights in the same position off the "Argyle"?

A. That question was too long; I would have to put it on paper to be sure I was right about it.

The COURT.—Q. Captain, if two vessels are approaching at a [144—116] certain angle, to maintain that angle they must change their course—one or the other of them?

A. Not to maintain the angle; to maintain a point and a half observation they must do it.

Mr. LILLICK.—Q. That is what I mean. If one vessel is changing her course the other vessel has to make a corresponding change in her course to keep the lights at the same point off her bow?

A. Oh, yes, there is no question about that.

Redirect Examination.

Mr. CAMPBELL.—Q. Mr. Dickie, I will ask you whether or not, in your judgment, these two vessels could have come together at the angle of impact if the "Gualala" had been approaching the "Argyle" on the "Argyle's" starboard bow and the "Gualala" had aported her helm and attempted to cross the "Argyle's" bow and the "Argyle" at the same time aorting her helm?

A. If the "Gualala" was on the starboard side, do you say?

Q. Yes. A. Yes, sir.

(Testimony of James Dickie.)

Mr. WALL.—Q. Captain, if the “Gualala” was sighted from the “Argyle,” bearing a point and a half off the “Argyle’s” starboard bow, and at a distance to starboard of about 900 feet from the “Argyle,” and the two vessels were approaching at the rate of about 16 knots an hour, can you tell me roughly about how fast the bearing of the “Gualala” would change to the man on the bridge of the “Argyle,” that is, about how fast it would draw aft, that is, would increase the bearing from a point and a half?

A. Not without laying that down on paper.

Q. Could you tell roughly?

A. I would not venture an opinion roughly; it might be too rough.

Q. There would be a comparatively rapid change of the bearing, would there not? You could say that, could you not? [145—117]

A. That would be beyond question.

The COURT.—Q. That would depend upon the distance the vessels were apart?

A. He said about 900 feet.

Mr. WALL.—Yes, I said about 900 feet to starboard.

Mr. CAMPBELL.—That is all, Mr. Dickie.

[Testimony of A. F. Pillsbury, for Claimant.]

A. F. PILLSBURY called for the claimant, sworn.

Mr. CAMPBELL.—Do you admit Mr. Pillsbury’s qualifications?

Mr. LILLICK.—Yes.

Mr. CAMPBELL.—Q. You have been a master

(Testimony of A. F. Pillsbury.)

mariner for many years, have you, Captain Pillsbury? A. Yes, sir.

Q. You heard this question which I have propounded to the various witnesses, the hypothetical question? A. I have.

Q. Have you the details of the question now in mind?

A. All excepting whether you mean the "Argyle" kept her wheel to starboard all the time.

Q. I will just read the question to you, with the Court's consent: Assuming that the "Gualala," a steam schooner, 120 feet long, loaded, while coming down the coast below Point Arena on a southeast course, making 8 knots per hour, observed, a point and a half on her port bow, the red light of the "Argyle," a steamship 320 feet long, loaded, making 8 knots per hour, and that thereupon, the "Gualala" ported her helm and payed off one and a half points in half a minute, and then hard aported for 25 or 30 seconds and then stopped and reversed for a minute, but, in the meantime, had swung $4\frac{1}{2}$ points more so that she was then on a south southwest course and still going ahead a mile an hour under a hard aport helm, would it, in your judgment, have been possible for the "Argyle," in the minute following the stopping [146—118] and reversing of the "Gualala" to have so changed her course to port as to have first shown her green light to the "Gualala" when the latter stopped and reversed, and then to have struck the "Gualala" practically bow on when the latter was headed south southwest? A. No.

(Testimony of A. F. Pillsbury.)

Q. Through what sort of a course would the "Argyle" have to pass in order to induce a collision of that character?

A. She would have to first starboard the wheel and increase her speed beyond a knot and then hard aport.

Q. What sort of a figure would that make?

A. The letter "S."

Q. If the two vessels were approaching each other starboard to starboard, with the "Argyle" aft the "Gualala" on her starboard bow, and the "Gualala" aported her helm and started across the course of the "Argyle" and at the time the "Gualala" showed her red light to the "Argyle" the latter ported her helm, I will ask you whether or not, in your judgment, a collision could have been produced so as to have brought the vessels together at the angle of impact testified to by Mr. Dickie. A. Yes, sir.

Cross-examination.

Mr. LILLICK.—Q. Captain Pillsbury, what course are you assuming in answering the question you did, the hypothetical question, that the "Argyle" was on? A. About a northwest half west.

Q. About a northwest half west course?

A. As opposed to the "Gualala's" southeast.

Q. But you are not in that answer taking into consideration the possibility of the "Argyle" having changed her course at all? A. No.

Q. That would entirely change the ultimate result, would it not? [147—119]

Mr. CAMPBELL.—Changing her course how?

Mr. LILLICK.—Anyway that was possible.

(Testimony of A. F. Pillsbury.)

Changing her course to port first.

A. I think I answered that, according to my opinion, by saying that the only way it would be possible if it were on the "Gualala's" port bow she would have to hard to starboard and would increase her speed and then bring it hard to port.

Q. In other words, it would have been possible if the officer in charge of the "Argyle" had attempted to keep the lights of the "Gualala" on the same point, on his starboard bow, and follow along, changing his course gradually to port, and then suddenly realizing the danger and changing his course to go to starboard?

A. Not if she had been on the port bow; if she were on the starboard bow, if the "Gualala" were on the starboard bow with the "Argyle"—

Q. (Intg.) Perhaps I am not making myself clear. Starting with the position of the "Gualala" a point and a half off the starboard bow of the "Argyle," the officer in charge of the "Argyle" making up his mind to keep the light in the same position now, and assuming also that the "Gualala" commenced to change her course to starboard, would the "Argyle" in order to keep that light in that same position not have changed her course to port?

A. Yes.

Q. She would have to change her course to port?

A. Yes.

Q. And if during the course of that maneuver and while the two vessels were approaching each other at the rate of 8 knots per hour, and the officer of the

(Testimony of A. F. Pillsbury.)

“Argyle” suddenly realized the imminence of danger and changed his course from the port course to starboard, putting his wheel hard aport, it could have accounted [148—120] for the position in which these two vessels struck each other, could it not?

A. If he had not gone too far.

Mr. WALL.—Q. Captain, did you make any survey of either vessel after the accident?

A. A survey of the “Gualala” for damage only.

Q. For whom did you make it?

A. The Union Oil Company, the owners of the “Argyle.”

Q. And also for any underwriters? A. Yes.

Mr. CAMPBELL.—Q. Captain Pillsbury, in answering Mr. Lillick’s last question I understood it assumed that the “Argyle” had the “Gualala” on her starboard bow?

A. That is right, and that is the only way it could be.

Q. If the “Argyle” had the “Gualala” on her starboard bow the “Argyle’s” green light would be the one showing to the “Gualala”?

A. Green to green.

The COURT.—Captain Dickie mentioned having read some testimony; did he mean the depositions that were introduced in evidence here?

Mr. CAMPBELL.—I will clear that up, your Honor; I will call Captain Dickie’s son.

[Testimony of David W. Dickie, for Claimant.]

DAVID W. DICKIE, called for the claimant, sworn.

Mr. CAMPBELL.—Q. You are Mr. Dickie's son?

A. Yes, sir.

Q. Did you hear him refer to having looked at certain testimony? A. Yes, sir.

Q. When was that?

A. Once I know of was this morning, and also some time ago.

Q. Did you and your father go over this deposition this morning? A. Yes, sir.

The COURT.—Deposition of whom? [149—121]

Mr. CAMPBELL.—Q. I will hand you this book; is that what you read?

A. Yes, sir, the deposition of Harry Gibbs, before the United States Inspector I think it was.

Mr. WALL.—Before the United States Inspector?

A. That is the deposition. I imagine it was taken before the inspectors.

Mr. CAMPBELL.—It was the deposition taken before the Commissioner for use in this case.

The COURT.—The one that was introduced here in evidence?

Mr. CAMPBELL.—Yes, sir, and read yesterday; the deposition of the second officer of the "Gualala."

Q. Did you make any calculation or drawing to show the course of the "Gualala"? A. Yes, sir.

Q. In passing from the southeast course to a southwest course, within the following times and

(Testimony of David W. Dickie.)

under the following conditions: the "Gualala" a)orting her helm and paying off one and a half points in half a minute, and then hard a)orting for 25 or 30 seconds, and then stopping and reversing for a minute, at which time she swung to a south southwest course? A. Yes, sir.

Q. Have you that drawing with you?

A. Yes, sir.

Q. Will you mark the southeast course?

A. This is the southeast course. This represents the "Gualala" the first half minute, the second half minute, and then she reverses at this point, and by the time she gets down to this point she is going one mile an hour. That is one minute later; that is 2 minutes total time. Off the port bow the "Argyle" was off in this direction. Off the star-board bow the "Argyle" would be in this direction.

Q. What I am asking you is does this show the course through which that vessel would pass under those conditions? A. Yes, sir. [150—122]

Mr. LILLICK.—What were the conditions?

Mr. CAMPBELL.—The conditions that have been embodied in the hypothetical question.

Q. Mr. Dickie, what business are you in?

A. Engineer and Naval Architect.

Q. How long have you been in that business?

A. I have been in the business since I was 16 years old—about 20 years now. I began in the Union Iron Works and served six years, studying under my father, at night. Then I took the Government examinations and got the appointment as

(Testimony of David W. Dickie.)

Draughtsman in the United States Navy Department at the Union Iron Works, and was transferred to Seattle as Chief Draughtsman. Then I went to Scotland—to the Glasgow University—for two years, and was employed in large shipyards there. Then I returned to America and worked in the Newport News shipbuilding yards, and in the Fall River shipbuilding yards. Then I came to California and joined my father in business and later joined my brother in the business which we now have.

Q. During your experience did you make the plans of any large vessels?

A. On the other side I worked on the plans of the “Coronna”; also the “Carmania,” which was one of the rescue ships in the accident that happened to the “Vulturno” the other day.

Mr. CAMPBELL.—I offer this chart in evidence. I do not care to offer the entire chart if it is consented that there may be a separation here.

Mr. LILLICK.—I think you had better put it all in. I don’t know what it means really.

Mr. CAMPBELL.—All right, it will all go in.

(The document was here marked Claimant’s Exhibit “E.”)

Cross-examination.

Mr. LILLICK.—Q. Upon what do you base the second position, [151—123] half a minute later?

A. The speed of the vessel was 8 knots an hour. That is drawn at the scale of 812 feet to the minute.

Q. But what with respect to the helm on which

(Testimony of David W. Dickie.)

the "Gualala" was running at that time?

A. The course of the "Gualala" was in that one and a half points to starboard aft one half a minute's time, which gave the first position, and then aft another half minute; the testimony gave the next course, I don't remember exactly what it was, the testimony gave the third course as $4\frac{1}{2}$ points more at the end of one minute's time.

Q. Did the ultimate situation at the end of the minute later and before swinging off as this diagram shows result in a corroboration of the testimony of Mr. Gibbs that she had swung off 6 points?

A. Yes.

The COURT.—I don't quite understand that. I understand that these figures were the result of that as the premise.

Mr. CAMPBELL.—He has laid down simply on paper the course that Mr. Gibbs gave us.

Mr. LILLICK.—As I understood Mr. Gibbs' testimony, it was that when the "Gualala" was coming down on this course she was proceeding on a southeast course; then giving times, a minute or a minute and a half, or whatever it is in the testimony, he testified that after a certain length of time, and just about the time of the collision, he had changed the course 6 points and was then on a southwest course. I am not sure about that latter one, however.

Mr. CAMPBELL.—A south southeast course.

Mr. LILLICK.—A south southwest course. I am asking Mr. Dickie whether or not his figuring of the

(Testimony of David W. Dickie.)

times and the distances that elapsed agreed with the testimony of Mr. Gibbs.

The COURT.—It is based on Mr. Gibbs' testimony. He is [152—124] out in the distance apart of the ships, but his times and his angles of courses as given agree, that is to say, they form a consecutive process that you can lay down and it will come out all right.

Q. What do you mean as to the distances?

A. His distances between the ships.

Q. That is, the distance between the "Gualala" and the "Argyle"?

A. Yes, sir, the "Gualala" and the "Argyle," and the time that occurred of his sighting of the ships do not agree by about three to one.

Q. In feet or in minutes?

A. Either his minutes are out or his distance is out.

Q. Approximately how far does a vessel going at the rate of 8 knots an hour go in a minute?

A. 812 feet.

Q. Exactly 812 feet? A. Yes, sir.

Q. And with vessels approaching each other at the rate of 8 knots an hour, they are approaching each other at the rate of 1624 feet per minute?

A. Yes, sir.

Q. Mr. Gibbs' testimony did not agree with respect to the distance apart.

A. He testified that he saw the ship a given distance ahead from him; he likewise gave the time between his first sighting of the ship and the time

(Testimony of David W. Dickie.)

of the accident; these two, the time, his speed and the distance that he was away from the ship do not agree; I am not criticising Mr. Gibbs because his judgment as to the distance away is probably an error. This diagram seems to indicate that the "Argyle" was on the starboard bow of the "Gualala" and not on the port bow as they testify. I came to the conclusion that that was probably accounted for by the yawing of the "Argyle" coming down the coast with a following sea. [153—125]

Q. A heavy vessel like the "Argyle" is somewhat difficult to steer, is it not?

A. No. The "Gualala" is more difficult to steer.

Q. That is, the little vessel coming down would give more to the action of the waves, they coming behind her?

A. She would be more likely to yaw than the long vessel would.

Mr. REDMOND.—Q. I do not understand that this witness has based any testimony that he has given upon Mr. Gibbs' testimony that she had turned 6 points. That was Mr. Gibbs' statement. But I do not understand that this witness has given any testimony based upon that part of Mr. Gibbs' testimony. What Mr. Lillick was seeking to bring out was that that conclusion of Mr. Gibbs' that the "Gualala" had turned 6 points, harmonized with the statement of this witness; in other words, this witness' testimony is not based on the conclusion of Mr. Gibbs about the 6 points. Is not that so, Mr. Dickie? A. No. Mr. Gibbs gave as a course—

(Testimony of David W. Dickie.)

Mr. CAMPBELL.—(Intg.) Will you point out in the questions submitted to you the information upon which you made that calculation? I refer you to page 29 of the testimony?

The COURT.—I understand the witness to have based his calculation on the fact that they first payed off a point and a half and thereafter $4\frac{1}{2}$ points in all; is that true Mr. Dickie?

A. I based the calculation on data which I took out of the testimony.

Q. Did you have this fact as testified to by the witness? A. I had that fact before me.

Q. The $4\frac{1}{2}$ points and the point and a half?

A. Yes, sir.

Mr. REDMOND.—Q. My understanding was that that statement by Mr. Gibbs was based upon the details stated by him, and that [154—126] this witness was deducing this from other details. Mr. Lillick then asked him whether or not the drawing he made harmonized with the conclusion given by Mr. Gibbs that the vessel had turned 6 points. I did not understand he was basing the diagram on the fact that the vessel had turned 6 points.

Mr. CAMPBELL.—I handed Mr. Dickie this hypothetical question and also the record and pointed out to him the pages from which I had taken the question, pages 28 and 29, and asked him to lay down on paper the course which Mr. Gibbs had testified to.

The COURT.—That is the way I understood him.

Mr. REDMOND.—I would like to ask Mr. Dickie

(Testimony of David W. Dickie.)

the question as to whether or not in any testimony you have given you took into consideration the testimony of Mr. Gibbs that the vessel had turned 6 points at the time of the collision.

A. Yes, sir, I took that into consideration.

Q. Did that control the other factors or did the other factors control that, or did the two harmonize?

A. The angle which Mr. Gibbs gave and the time which Mr. Gibbs gave and the speed which he gave harmonized very closely, so closely that I assumed they were all correct in the laying down of Mr. Gibbs' courses of the "Gualala."

Q. The point I am seeking to bring out is this: Leave out his conclusion that he had turned his vessel 6 points, did the other testimony given by him corroborate that conclusion? A. Yes, sir.

Mr. CAMPBELL.—Q. In what respect?

A. Taking the first two positions of the vessel as given and without regard to his $4\frac{1}{2}$ points whatsoever and merely continuing the line on out in a fair line his conclusion of the $4\frac{1}{2}$ points would be about correct, if it is a conclusion. [155—127]

Q. That is to say, she would swing to about a south southwest course in the time and under the apportioning of the helm as he put it?

A. Yes, she would swing about to that angle.

Q. So that if he put his helm as he testified and ran approximately for that length of time, at the time of the collision he would have been on a south southwest course? A. Yes, sir.

[Testimony of Frank Elwood Ferris, for Claimant.]

FRANK ELWOOD FERRIS, called for the claimant, sworn.

Mr. CAMPBELL.—Q. Are you a master mariner? A. Yes, sir.

Q. How long have you held master's papers?

A. About 15 years.

Q. Were you ever master of the "Argyle"?

A. Yes.

Q. Are you at the present time the Port Superintendent of the Union Oil Company?

A. Yes, sir.

Q. Have you read this hypothetical question which I have read to Captain Pillsbury and to Mr. Dickie? A. I have.

Q. Assuming that the "Gualala," a steam schooner, 120 feet long, loaded, while coming down the coast below Point Arena on a southeast course, making 8 knots per hour, observed, a point and a half on her port bow, the red light of the "Argyle," a steamship 320 feet long, loaded, making 8 knots per hour, and that thereupon, the "Gualala" ported her helm and payed off one and a half points in half a minute, and then hard aported for 25 or 30 seconds, and then stopped and reversed for a minute, but, in the meantime, had swung $4\frac{1}{2}$ points more so that she was then on a south southwest course and still going ahead a mile an hour under a hard aport helm, would it, in your judgment, have been possible for the "Argyle," in the minute following the stopping and reversing of the "Gualala" to have so

(Testimony of Frank Elwood Ferris.)

changed her [156—128] course to port as to have first shown her green light to the "Gualala" when the latter stopped and reversed, and then to have struck the "Gualala" practically bow on when the latter was headed south southwest?

Mr. LILLICK.—If your Honor please, we object to the question upon the ground that it is not based on that portion of the testimony which gives the previous course of the "Argyle."

Mr. CAMPBELL.—I am assuming your own testimony, that the "Argyle" was at one and one-half points.

Mr. REDMOND.—But in what direction is she going? Your question does not state that. In what direction is the "Argyle" moving?

Mr. CAMPBELL.—The "Argyle" was showing her red light and was on a course northwest one-quarter west?

A. I would assume that being a point and a half on the bow and steering a southeast course; I would assume that to be the course.

Mr. REDMOND.—You don't assume any change in the "Argyle's" course?

Mr. CAMPBELL.—I do assume a change, because I assume that at the moment the "Gualala" stops and backs the "Argyle" puts her helm hard astarboard.

Mr. REDMOND.—So you don't assume any change in the course when the vessels were first seen? Your log states a change in the course and so does the testimony of Gibbs.

(Testimony of Frank Elwood Ferris.)

Mr. CAMPBELL.—Well, you can propound the question as you think it ought to be. I submit that the testimony does show that the green light of the “Argyle” was not shown to the “Gualala” until the “Gualala” stopped and backed.

Mr. LILLICK.—If your Honor please, that does not state [157—129] the course of the “Argyle” and does not assume a change in the course of the “Argyle.”

The COURT.—But is not that a matter to be developed upon cross-examination?

Mr. LILLICK.—Perhaps it is, your Honor.

Mr. CAMPBELL.—I don’t see how I can put that into the question because there is no change in the course of the “Argyle” that is given by Mr. Gibbs. The first definite change in course he got is that her green light comes into view at the time he stops and backs.

The COURT.—Proceed with your questions.

Mr. CAMPBELL.—Q. Now, will you answer the question?

A. I understand your question, I think, but I would like to be clear on it; you mean that in the time that the “Argyle” swung the 6 points—

Q. Just listen to the question again. I will give you the question again: Assuming that the “Gualala,” a steam schooner, 120 feet long, loaded, while coming down the coast below Point Arena on a south-east course, making 8 knots per hour, observed, a point and a half on her port bow, the red light of the “Argyle,” a steamship 320 feet long, loaded, making

(Testimony of Frank Elwood Ferris.)

8 knots per hour, and that thereupon, the "Gualala" ported her helm and payed off one and a half points in half a minute, and then hard aported for 25 or 30 seconds, and then stopped and reversed for a minute, but, in the meantime, had swung $4\frac{1}{2}$ points more so that she was then on a south southwest course and still going ahead a mile an hour under a hard aport helm, would it, in your judgment, have been possible for the "Argyle," in the minute following the stopping and reversing of the "Gualala" to have so changed her course to port as to have first shown her green light to the "Gualala" [158—130] when the latter stopped and reversed, and then to have struck the "Gualala" practically bow-on when the latter was headed south southwest?

A. In my judgment it would have been absolutely impossible because in that time with her engines reversed and going full speed astern she could not possibly have gone under astarboard helm and then stopped and came back under aport helm and met anywhere near head-on.

Q. What movement would be necessary for the "Argyle" to bring herself into that position?

A. She would first have to come under a starboard helm to show her green light, and then she would have to come away back under aport helm in order to meet head-on, with her engines going full speed astern.

Q. Could she do it with the engines going full speed ahead?

A. No, not then; she could not have checked her

(Testimony of Frank Elwood Ferris.)

way with one swing to port and then to starboard. The "Argyle" is very sluggish in first starting on her helm.

Q. After she started on her helm, suppose you started her swinging to port under her starboard helm, how would you have checked her speed so as to bring her back on a swing to starboard?

A. Simply by putting her helm over hard to port.

Q. How would she check herself?

A. She would check up very slowly, very slowly.

Cross-examination.

Mr. REDMOND.—Q. Captain, have you not assumed in answering the hypothetical question asked you by Mr. Campbell, that the "Argyle" was not swinging on her starboard helm?

A. I have, yes, sir. [159—131]

Redirect Examination.

Mr. CAMPBELL.—Q. What do you mean by that, that she was not swinging on her starboard helm?

A. I gather from your question that during the time that the "Gualala" was swinging, showing her just started on her starboard helm, but even if she had been swinging fully under a starboard helm in my judgment she could not have come back and got head-on anyway; but I did assume that she simply started over on the starboard helm at that time.

Q. At what time?

A. At the time the "Gualala" started.

Q. My question was, at the time the "Gualala" started to back and the "Argyle" had brought her

(Testimony of Frank Elwood Ferris.)

green light in view. A. Yes.

Q. In order to bring her green light into view was she swinging on her starboard helm?

A. Her green light was already in view. She would have to be swinging on the starboard helm.

Q. Do you understand the question? That question assumes that these two vessels were in position where the "Gualala" had the "Argyle" on the port bow seeing her red light? A. Yes, that is right.

Q. In order that the "Argyle" should display her green light to the "Gualala"—

A. (Intg.) She would have to swing a point and a half, or a point anyway, on the starboard helm.

Mr. LILLICK.—Q. And yet if she had commenced to swing on the starboard helm at the time when the vessels were 3 miles apart, and then changed her course to hard aport she could have swung around in a position where the two vessels could have come in a position head-on as they did?

A. No, I don't think so. [160—132]

Q. Why not?

A. She would not have time to do it. I know it will take the "Argyle" fully a minute to get fully under way under any helm; that is, to put the helm hard over she will take a minute to get her full swing.

Q. You do not know when the vessel commenced to swing on that starboard helm, do you, Captain?

A. I don't know that she was swinging. I am not assuming that she was swinging. But even if she was swinging, in the time that is stated by Mr. Camp-

(Testimony of Frank Elwood Ferris.)

bell she could not do it.

Mr. CAMPBELL.—Q. My question assumes this, Mr. Lillick, necessarily; at the time the “Gualala” starts to swing the two vessels are port to port, so that the “Gualala” has the “Argyle” a point and a half on her port bow, and then when the “Gualala” starts to back the green light of the “Argyle” comes into view, necessarily there is included in that question the implication that the “Argyle” has been swinging on a starboard helm to port at least for some interval prior to the time that her green light comes into view, and after the “Gualala” starts on her port helm.

Mr. LILLICK.—Q. Assuming that the “Argyle” was proceeding upon a starboard helm when the masthead light of the “Gualala” came in sight, could he not have kept on on that starboard helm to a point when she could have subsequently turned by changing her helm hard to port and then the two vessels come together?

A. No, she would have to come all the further back on her other helm.

Q. Assuming that she was on the starboard side of the “Gualala” what would the situation have been?

A. Do you mean if the “Argyle” had gone hard astarboard and the “Gualala” had gone hard aport?

Q. Yes.

A. They probably would have cleared one another.
[161—133]

Q. And it is probable that they might have hit each other, and hit each other absolutely as they did, is it

(Testimony of Frank Elwood Ferris.)

not? A. No, absolutely impossible.

Q. Why?

A. Because she could not come back; if she kept on on her starboard helm she would have been all right. We will assume that. They both would describe their own circle and be for a period parallel and then have receded one from another.

Q. If she changed her helm again she could have run in, directing her course in such a manner as to make the letter S, could she not?

A. No, that is impossible in my judgment.

Q. And you don't think it would make any difference whether the "Gualala" was on the port or starboard side of the "Argyle" during all of this maneuver as to whether or not the collision might have happened in the way it did?

A. If she were a point and a half on the bow and the "Argyle" had kept her course or put her helm to port then the chance of collision as I see it was great, but if her helm had been hard to starboard then the chances were diminished greatly.

Mr. REDMOND.—Q. You say hard to starboard?

A. Yes, sir.

Q. There is no evidence she put it hard to starboard? A. I say assuming it was.

Q. Suppose it was not hard to starboard, suppose she was put one-half point to port and then ran that way for 8 minutes?

A. The "Gualala" would have hit the "Argyle."

Q. There would have been a collision then?

A. Undoubtedly.

(Testimony of Frank Elwood Ferris.)

Mr. CAMPBELL.—Q. Which vessel would have run into her?

A. The “Gualala” would have undoubtedly struck the “Argyle.”

Mr. CAMPBELL.—That is all, if your Honor please. [162—134]

[Testimony of Aslak Abrahamson, for Libellant.]

ASLAK ABRAHAMSON, called for the libellant, sworn.

Mr. HOGEVELL.—Q. What is your age?

A. 29 years.

Q. What is your business?

A. I used to be a sailor; I have no business at present.

Q. Are you one of the sailors that happened to be on the steamship “Gualala” in that collision?

A. Yes.

Q. Tell the Court what happened to you at that time, what injuries you received.

A. Both my legs were badly crushed from the knees down, my legs and feet. My leg was broken just below the knee-joint, extending into the knee. The bones in my foot were crushed. My toes were broken. I guess that is all.

Q. What, if anything, happened to the bones in your knee?

A. The tibia—the big bone in the leg—was broken.

The COURT.—Is it disputed that he received these injuries? The doctor testified to them?

Mr. CAMPBELL.—I have no evidence to offer in rebuttal.

(Testimony of Aslak Abrahamson.)

Mr. REDMOND.—I think the doctor's testimony, in accordance with information given me, is substantially correct.

The COURT.—Then the only question left is as to the permanency of his injuries and the pain which he may have suffered.

Mr. HOGVELL.—Q. Tell us whether or not your injuries are permanent.

A. They are certainly permanent.

Q. What did you make per day or per month before you got hurt? A. \$100 a month.

Q. How much can you make now?

A. I don't know.

Q. What were your habits before you got hurt? Were you a sober and an industrious man?

A. I was; absolutely temperate.

Q. You have set out in this libel that you lost some personal property; how much did you lose?

A. I lost about \$94 worth of [163—135] clothing, personal apparel, and \$27 in money.

Q. What happened to your toes on one foot?

A. They were all fractured; I was told so by the doctors. Three of them have been amputated.

Q. On which foot? A. On the right foot.

Q. Tell the Court if you suffered any pain by reason of gangrene.

A. I did. I was at that time in the Marine Hospital. Previous to and after the amputation of the toes I suffered very heavy. At the time of the amputation of the toes it became necessary to drill a hole from the foot to the toes, and about the middle

(Testimony of Aslak Abrahamson.)

of the foot, to drain the matter out of the foot; it was necessary to dress that every morning; during that time I suffered tremendous pain. It was kept open for two months. For 3 or 4 weeks I could not sleep at all except by the use of opiates.

Q. Is there any suffering that you have not mentioned?

A. I suffered through my left foot and my leg; both my legs swell up if I walk; both my legs swell up, causing pain through the calf of the leg and also under the heels of both feet.

Cross-examination.

Mr. CAMPBELL.—Q. Do you belong to the Sailors' Union? A. I do.

Q. What wages did you receive on this vessel?

A. \$55 a month.

Q. That is the union wages?

A. Those were my wages, but I made more than that.

Q. Those are the Union wages for sailors on the coast, \$55 a month?

A. Yes, in that kind of trade; I sometimes had \$60 for running a boat, as we call it; I got \$5.00 extra for doing that, when you make landings at outside ports.

Q. You mean to surf ports?

A. Yes. [164—136]

Q. Not very many vessels run to surf ports, are there? A. I was nearly always doing that.

Q. Anything you made over \$55 a month was for extra time? A. On the "Gualala," yes.

(Testimony of Aslak Abrahamson.)

Q. That is true on all vessels on the coast, is it not?

A. I had \$60 on some of them.

Q. Anything over \$60 would be by reason of extra time you had a chance to put in?

A. Yes, sir, and my board.

The COURT.—Q. You had your board besides that? A. Yes, my board was aside from that.

Mr. HOGEVELL.—I have an insurance agent who will testify that it would cost \$22,000 to buy an annuity that would give the sum of \$100 a month for his expectancy of life, which is 39 years. That would not be conclusive proof, if your Honor please, but would be some evidence.

Mr. CAMPBELL.—That would not be competent proof, would it?

Mr. HOGEVELL.—Yes. I have a case here showing that that is competent testimony. I do not want you to admit the truth of the testimony but I simply want you to admit that the witness will so testify.

The COURT.—What is the suggestion about that offer of testimony?

Mr. REDMOND.—I think it has been held that that is admissible testimony, but it is not conclusive.

The COURT.—I understand that. I simply asked you whether it was admitted that this man will so testify, and you denying the materiality or relevancy of the testimony. May it be considered that the testimony has been offered and received?

[165—137]

(Testimony of Aslak Abrahamson.)

Mr. REDMOND.—Will you just state that again, Mr. Hogevell?

Mr. HOGEVELL.—I offer to prove by an insurance agent by the name of Johnson that it would cost the sum of \$22,000 to buy an annuity that would give a man of 36 years expectancy of life the sum of \$100 a month for the remainder of his life. I offer it not as conclusive proof but merely as evidence which the Court may consider. I do not ask you to admit that that is true, but simply that the witness will so testify.

Mr. CAMPBELL.—For what company is this man an agent?

Mr. HOGEVELL.—For the Pittsburg, Life & Trust Company. And I may say here that that is the cheapest company of them all. His expectancy is 36 years. His age now is 29.

Mr. REDMOND.—Is the expectancy table here?

Mr. HOGEVELL.—Yes.

The COURT.—How long may a man 29 years of age reasonably expect to live?

Mr. HOGEVELL.—It shows here, your Honor, that a man 29 years of age might expect to live 36 years.

[Testimony of Konstant Latz, for Libelant.]

KONSTANT LATZ, called for the libelant, sworn.

Mr. WALL.—Q. You were a seaman on board the “Gualala” at the time of the collision?

A. Yes, sir.

Q. How old are you now? A. 28 years old.

Q. What was your physical condition before the

(Testimony of Konstant Latz.)

collision? A. I was strong and in health.

Q. Strong and in good health? A. Yes.

Q. What were you earning a month at that time, before the collision?

A. I used to make from \$60 to \$80 and \$100 a month. [166—138]

Q. What had been your average earnings for the year prior to the time you were hurt—that is, how much did you earn altogether during the year before you were hurt? How much did you earn in the twelve months before you were hurt?

A. I had about \$120 before I was hurt.

Q. I don't mean how much you had, but how much did you make for the whole twelve months before you were hurt? A. About \$80 a month.

Q. About \$80 a month for the whole twelve months; is that correct? A. Yes, sir.

Q. Your wages as a seaman always included your board on board ship? A. Yes, sir.

Q. Your food and lodging? A. Yes, sir.

Q. What were your wages?

A. On the steamship "Gualala"?

Q. What were your wages on this coast, per month? A. From \$50 to \$60 a month.

Q. And the rest of it that you spoke of was what you got paid for overtime work, was it?

A. Yes, sir.

Q. Where were you on the ship at the time of the accident? A. I was sleeping in my bunk.

Q. Where was your bunk?

(Testimony of Konstant Latz.)

A. My bunk was in the forecandle, forward, on the port side.

Q. You were not on watch then, were you?

A. No.

Q. You were down below sleeping in your bunk?

A. Yes, sir.

Q. What was the first thing you knew of the accident?

A. When I woke up there was some boards laying on top of me and the water came at the same time, and so I tried to get up, but I could not do it.

Q. Why couldn't you get up?

A. I was smashed up all over, and the boards and everything were lying on top of me. [167—139]

Q. How were you mashed up—what were the injuries you received? A. I was short of wind.

Q. What injuries or hurts had you received when you woke up? Was either one of your legs broken?

A. I found my leg broken after awhile; I didn't know anything about it before.

Q. How long afterwards did you find your leg broken?

A. I could not tell, but about 15 or 20 minutes.

Q. Which leg? A. The left leg.

Q. Where? A. Between the knee and the hip.

Q. What other hurts did you receive, if any?

A. I was bruised up all over, both legs and around the breast and my shoulders.

Q. How did you get away from the bunk? After the collision you found yourself in the bunk?

A. Yes, sir.

(Testimony of Konstant Latz.)

Q. How did you get away from there?

A. Somebody pulled me out.

Q. Where from? Through the door or through the top of the deck?

A. I could not tell. There was a big hole, and I was pulled through that hole.

Q. Where did they take you?

A. Two men pulled me out and put me alongside the mast. Some fellow told me to hold on to the rope, that he was going to look for a life-preserver.

Q. And it was then you found that your leg was broken? A. Yes, sir.

Q. So they left you up there, then? A. Yes, sir.

Q. How long were you there?

A. I was sitting there for awhile and a fellow came and told me he could not find any life-preserver; after that he went aft to help other fellows to lower the boat, but I was sitting right there full of pain; I considered the ship was gone, it was on the side.

Q. She was listed over? A. Yes. [168—140]

Q. Very much or just a little?

A. The water was right up to my knee.

Q. Did the boat come right alongside of the ship then? A. Yes, sir.

Q. How close could it get to the ship?

A. About 14 feet.

Q. And how did you get into the boat from the place where you were?

A. I just slipped over; I hurt myself before I got into the water, and I commenced to swim.

Q. You slipped from the foremast, into the water?

(Testimony of Konstant Latz.)

A. Yes.

Q. And then you swam over to the boat?

A. Yes.

Q. Tell the Court what pain you suffered while they were pulling you up from the forecastle, and when you were out of the forecastle, and when you were going down the side of the vessel into the water.

A. When those two fellows came and lifted me up I was hurt all over.

Q. Did you feel the pain?

A. Yes, I felt the pain and I could hardly talk, I was so short of wind.

Q. How were you taken in the boat?

A. When I came alongside then somebody grabbed me and dragged me inside.

Q. What was the condition of your broken leg at that time?

A. This leg was lying right on top of the other one.

Q. Was there great pain or little pain when they pulled you up into the little boat?

A. They dragged me over and I felt great pain.

Q. Did your leg come clear or did your leg drag over the side of the boat?

A. It did not come clear.

Q. After they got you in the boat what did they do with you?

A. Then we went along side the "Argyle."

Q. How were you gotten up from the boat to the "Argyle," up to the deck of the "Argyle," and about what distance was it? [169—141]

A. I don't remember; I could not tell.

(Testimony of Konstant Latz.)

Q. About how far do you think it is?

A. About 12 or 14 feet, or something like that.

Q. How did they get you up there?

A. Some fellow threw a line down and they put the line around my breast and then started to pull me up.

Q. How did they get you over the side of the ship on to the deck? A. They pulled me up.

Q. In getting you up did your leg go clear or did it strike alongside the ship?

A. It struck alongside the ship every time the sea rolled.

Q. After they got you on the ship where did they take you?

A. I was taken into a room and left on the floor there, and everybody walked away.

Q. How long were you on the floor?

A. About 10 or 15 minutes.

Q. Then what did they do with you?

A. Then some people came to my side, the captain of the "Argyle" told some fellows to get a mattress and put me on the floor; they took my clothes off.

Q. Did you suffer much when they were taking your clothes off? A. Yes, sir.

Q. And then after that the "Argyle" came to San Francisco, did she, with you on board?

A. Yes, sir.

Q. What did they do with you when you came to San Francisco?

A. The captain on the "Argyle" put hot compresses on my leg.

(Testimony of Konstant Latz.)

Q. And they sent you ashore how soon after the "Argyle" got to San Francisco?

A. As soon as they came to San Francisco some doctors came on board and gave me some medicine and I did not feel the pain any more.

Q. They gave you some medicine to kill the pain?

A. Yes, sir. [170—142]

Q. Where did they send you from the "Argyle"?

A. They sent me to the St. Francis Hospital.

Q. To the St. Francis Hospital in San Francisco?

A. Yes, sir.

Q. That was on October 15th? A. Yes, sir.

Q. How long did you remain there?

A. I was there for two weeks.

Q. Then where were you sent to?

A. To the Marine Hosiptal.

Q. Do you know who sent you out there?

A. No.

Q. You mean the United States Marine Hospital?

A. Yes, sir.

Q. That is the place where sailors are sent when they are injured or when they are sick?

A. Yes, sir.

Q. How long were you there?

A. I was there from the 29th of October until the 8th of March.

Q. Have you been able to do any work since you were hurt?

A. No, sir. I left the hospital carrying a stick and I carried a stick until September 10th.

Q. What is the condition of your leg with refer-

(Testimony of Konstant Latz.)

ence to being longer or shorter than the other one?

A. My leg is 1 7/8 inches shorter than the other one.

Q. How is it as to being able to put any weight on it? A. I cannot put very much weight on it.

Q. Will you ever be able to discharge your duties as a sailor and seafaring man?

A. I don't think so.

Q. Have you ever followed any other occupation except that of a seafaring man? A. That is all.

Q. Have you since you were hurt suffered or worried because of the fact that you would not be able to follow your regular occupation because of your injuries? A. Yes, sir.

Q. Have you suffered much or little?

A. I suffered much. My leg is shorter. I have been looking for some kind of light work, watchman or something like that, but I could not find any; [171—143] if I walked around one day I would have to lay up the next day.

[Testimony of John H. Rinder, for Libellant.]

JOHN H. RINDER, called for the libellant, sworn.

Mr. LILLICK.—Q. What is your business?

A. I am a ship-broker now; I was originally a shipmaster.

Q. How long were you a shipmaster?

A. About 17 years.

Q. On what seas?

A. Pretty near all over the world; principally across the Pacific.

Q. Captain, do you consider it a proper order to

(Testimony of John H. Rinder.)

give to a quartermaster at the wheel when a steamer is approaching you upon an opposite *car*, with her masthead lights showing, and a point or a point and a half on her starboard bow, and apparently one mile to 3 miles away, to don't let her come any closer?

A. No.

Q. Did you ever hear of such an order being given to a quartermaster? A. No.

Q. What would be the effect of such an order?

A. The officer in charge of the ship would not know where the ship was going. He would be leaving it to the quartermaster.

Q. What is the custom at night when the officer on the bridge sees a vessel approaching—a steamer—a mile to 3 miles away, approaching on an opposite course, with reference to walking back and forth across the bridge?

A. As a general rule, an officer would stand carefully in one position so as to watch the changing of the bearings of the vessel as they approached one another. That would be an act of caution, it would be an act of caution to do that.

Q. Would you, or not, consider an officer a careful and responsible officer who did other than to watch those lights all the time? [172—144]

A. I would expect him to watch the lights all the time.

Q. What have you to say with reference to his responsibility when he gives such an order to his quartermaster as to don't let her come any closer?

(Testimony of John H. Rinder.)

A. Well, I should not care for him to be an officer with me.

Cross-examination.

Mr. CAMPBELL.—Q. I understand, Captain, you would consider it was his duty to stand and watch these lights? A. Yes, sir.

Q. Where would you have him stand?

A. If the light was on the starboard side he would stand on the starboard side of the bridge.

Q. And watch those lights?

A. And watch those lights carefully.

Q. You would consider it his duty to maintain a watch from the bridge for the lights?

A. Certainly.

Q. And standing on the starboard side of his bridge he would keep his eyes on the lights if they were reported on his starboard bow? A. Yes.

Q. Why would you have him stand on the starboard side of the bridge?

A. I said if the vessel was off the starboard bow.

Q. I am assuming that.

A. Because he could see clearer, he could see a great deal better than he could off the port side.

Q. Then until the vessel on the starboard bow had passed him your port bridge would be without the proper kind of a lookout on the bridge?

A. Probably, yes, to some extent.

Q. And that you would consider proper navigation? A. That is the usual custom.

Q. And that you would consider proper navigation? A. Yes.

(Testimony of John H. Rinder.)

Mr. WALL.—Q. There is a man supposed to be up forward on [173—145] the steamer also on the lookout, to report to the officer on the bridge, is there not? A. Yes, sir.

Q. And his position is right up at the eye of the ship? A. Yes, sir.

Q. Where he is supposed to see right ahead and on both sides of the ship, and to report anything he sees to the officer on the bridge? A. Yes, sir.

**[Testimony of Konstant Latz, for Libellant
(Recalled).]**

KONSTANT LATZ recalled.

Mr. WALL.—Q. Did you have any of your personal effects or belongings on board the “Gualala” at the time of the collision? A. Yes, sir.

Q. What were they worth, the whole amount that you had there?

A. I don't remember exactly, it is a long time ago, but I guess \$120, or something like that.

The COURT.—Q. You lost them?

A. Yes, sir.

Mr. LILLICK.—If your Honor please, I can save the witness coming back if I ask him a few questions now.

The COURT.—Very well, proceed.

Mr. LILLICK.—Q. When you were on the “Argyle,” and in the captain's room on the “Argyle,” and they were putting these hot towels on your legs, did you hear the captain of the “Argyle” say anything about the collision, how it happened?

A. The captain of the “Argyle” had been explain-

(Testimony of Konstant Latz.)

ing how the collision was.

Q. What did he say?

A. I could not remember very much because I was full of pain, but I remember one thing, he told the quartermaster to put the wheel hard to starboard. That is all I remember. I am sure of that. [174—146]

Mr. CAMPBELL.—Q. At that time you were suffering a great deal of pain?

A. Yes, sir.

Q. Who were present then, who were in the room?

A. I remember one fellow who was there, the winchman from the “Gualala”; there were 3 or 4 there, but I don’t remember them.

[Testimony of Jacob Stack, for Libellant.]

JACOB STACK, called for the libellant, sworn.

Mr. LILLICK.—Q. Mr. Stack, what was your employment in October, 1912,—where were you working?

A. I was working on the steam schooner “Gualala.”

Q. After the collision between the “Argyle” and the “Gualala” were you present in the room of the captain upon the “Argyle” when hot towels were being placed upon the legs of these injured sailors?

A. Yes, sir, I was there once, between 10 and half past 12.

Mr. CAMPBELL.—Q. Was this witness named to the captain as the one to whom he made the statements this morning?

(Testimony of Jacob Stack.)

Mr. LILLICK.—I don't know whether we named the witness. I will have to ask the Reporter as to that.

Mr. CAMPBELL.—I object to the question as not being a proper impeaching question.

Mr. LILLICK.—The object of this, your Honor—

The COURT.—I understand the object of it, but what is the fact as to the question counsel asked you?

Mr. LILLICK.—I was going to say that the object—

The COURT.—Everybody understands the object of the question. What is the objection?

Mr. CAMPBELL.—I do not understand that the question was called sufficiently definitely to the captain's attention to [175—147] allow this witness to testify.

The COURT.—The captain denied having made any such statement in anybody's presence. The objection is overruled.

Mr. CAMPBELL.—We note an exception.

Mr. LILLICK.—Q. What did the captain of the "Argyle" say upon that occasion about the collision?

A. The sick man was having hot towels put on, and the captain said he was sorry the thing happened, and he was telling exactly how it happened. He said he gave the third mate the orders to call him if it got thick and foggy, and I don't know what time he mentioned but he said he called him, the captain, that it was getting thick again, and that he got up and dressed himself, but that it was clearing up, but he got up anyhow, and that he went into the galley

(Testimony of Jacob Stack.)

and had a cup of coffee and he heard one whistle and he ran on the bridge and sung out "Hard astar-board." That is what he said.

The COURT.—The way to impeach a witness is to read to the impeaching witness the question you propounded to the witness you desire to impeach, and ask him if he did make that statement.

Mr. LILLICK.—Q. Did you upon the occasion to which you have just referred, when the captain of the "Argyle" was in his cabin, hear the captain of the "Argyle" say, "I never had such an accident in my life; this is the first time. I was awake in bed and got up and went to the galley to get a cup of coffee and I heard the whistle, and then I went up on the bridge and sung out, 'Put your wheel hard astar-board' " ? A. Yes, sir, that is what he said.

Q. You heard the captain of the "Argyle" say that? A. Yes, sir.

Q. And that was in the cabin of the "Argyle," was it? A. Yes, sir.

Cross-examination.

Mr. CAMPBELL.—Q. What time was it when this conversation [176—148] took place?

A. It was somewhere around 11 o'clock, at the time we came back to San Francisco, 11 o'clock in the forenoon.

Q. And in his room?

A. Yes, sir, in the captain's room.

Q. What were the words that he said?

A. He said that when he came on the bridge—you mean the same words?

(Testimony of Jacob Stack.)

Q. Yes, in your words, not in the attorney's words.

A. He said that he gave the third mate orders that when it got thick and foggy to give him a call; he said he was sleeping and that the third mate gave him a call, and so he got up and dressed himself, and he was going on deck, and he said that he whistled down again or he went down, I don't know which, that it was clearing up again a little bit, and he said he was going to get up anyway, and he got up and went in the galley and had a cup of coffee, and that he heard one whistle and that he ran on the bridge and he sang out hard astarboard.

Q. You knew that at the time you came here to San Francisco, you knew of that statement being made by the captain, did you not? A. Yes, sir.

Q. You were summoned to appear as a witness before the United States Steamboat Inspectors, were you not? A. I was.

Q. To tell what you knew about this collision?

A. He asked me some questions.

Q. You were summoned before the United States Steamboat Inspectors, were you not? A. Yes, sir.

Q. And asked to tell the "Gualala" story about the collision?

A. He did not give me a chance to finish it; it was after 5 o'clock in the evening; he said, "That will do."

Q. You did not make this statement to the United States Steamboat Inspectors, did you? A. I did.

Q. Did you testify to that statement before the United States Steamboat Inspectors? [177—149]

(Testimony of Jacob Stack.)

A. Not this statement, no; he did not ask me.

Q. Well, you did not testify to it? A. No.

Q. And yet you were called there as a witness for the "Gualala" side of the case, were you not?

A. Yes, I was called there.

Q. And after you finished testifying on that day other witnesses were called, were they not?

A. I went away then. The Inspector was in a hurry; he said, "That is enough." He let me go; it was after 5 o'clock.

Q. Had you told your owners about it at that time, had you told them about this conversation? Who did you tell about this conversation?

A. To the captain of the "Gualala."

Q. At that time? A. Yes.

Q. While you were still on the "Argyle"?

A. After we got down to San Francisco.

Q. You told the captain of the "Gualala"?

A. Yes. The captain was not on board of the "Argyle"; he was behind watching the wreck.

Q. But you told him as soon as he arrived?

A. Yes.

Q. And that was before the hearing before the Inspectors? A. Yes.

Q. Who else did you tell? A. Mr. Linderman.

Q. And that was before the testimony was taken before the Inspectors, was it, that you told him that?

A. Yes, sir.

Q. And when you came to testify before the inspectors you never said anything about it at all?

A. They did not give me a chance to speak.

(Testimony of Jacob Stack.)

Mr. LILLICK.—Q. You were not asked about it, were you?

The COURT.—He has said so four different and distinct times.

A. They were in a hurry to get through; it was on a Saturday night, too, I believe. [178—150]

Mr. CAMPBELL.—I would like to ask counsel, in order to save the record, if he will admit that other witnesses were called at that hearing following Mr. Stack. I refer to page 38.

Mr. LILLICK.—But I cannot understand what difference that makes.

Mr. CAMPBELL.—Will you admit there were more witnesses called after Mr. Stack at that hearing?

Mr. LILLICK.—Third Mate McAlpine was recalled; another witness was called, and then that was all.

Mr. CAMPBELL.—And you were present at the hearing?

Mr. LILLICK.—Yes.

[Testimony of Aslak Abrahamson, for Libelant (Recalled).]

ASLAK ABRAHAMSON, recalled, for the libelant.

Mr. LILLICK.—Q. Mr. Abrahamson, when you were on the “Argyle,” did you hear the Captain of the “Argyle,” as you were lying there with hot towels being put on your foot and on your leg, say, “I never had such an accident in my life; this is the first time. I was awake in bed and I got up and went to the

(Testimony of Aslak Abrahamson.)

galley to get a cup of coffee and heard a whistle, and then I went up on the bridge and sung out 'Put your wheel hard to starboard' ''?

A. He said that substantially, not exactly in those words, but substantially that.

Q. What do you remember him saying?

A. In the first place, I had him sent for because I was suffering heavy pains and I wanted to know if he had some medicine that could in some way lessen my pain, and I believe that the lookout man on the "Argyle" went for him, but somebody went for him, and shortly after that the captain came in and stood and looked at me for quite awhile; he asked me how I was and I said I was feeling pretty bad, and I asked him if he [179—151] had some medicines that would put me to sleep or lessen my pain and he said no, he did not have anything. He said, "I have been going to sea for 32 years and I never had an accident in all my life," and then he commenced to tell about the thing; he said, "I was asleep and somebody came and called me and told me it was getting foggy"; he said, "I got up and got on the bridge and then it was clearing up and was getting nice and clear and I went down below for a cup of coffee, that while I was washing out the cup I heard one whistle blow and I ran on the bridge as quick as I could and I seen a light a little on our starboard bow, and I told the man at the wheel 'Hard astarboard,' and then I seen it was too late, and I hooked her up full speed astern."

(Testimony of Aslak Abrahamson.)

Cross-examination.

Mr. CAMPBELL.—Q. Where was this conversation?

A. This was while I was lying on the “Argyle,” in heavy pain, in a room down below amidships some place, I don’t know where.

Q. Who was with you, if anybody?

A. There were at least two people in the room; I think one of the seamen on the “Gualala,” Nelson, the same man that carried me out of my bunk or helped to carry me out, I think he was there; I could not say for certain who was there. I also have an idea that Hanson was there because he was attending me nearly all the way down, and I believe he was there at that time, but I am not sure.

Mr. WALL.—Q. Were you in the same room with Latz? A. No, sir.

Q. You were in a different room?

A. Yes, sir, I was in a different room.

Mr. LILLICK.—If your Honor please, the only other witness [180—152] that I have, and the man whom I had in mind yesterday when I spoke about Mr. Campbell having consented to allow us to take his testimony at some other time, Captain Curtis, can be taken whenever we arrange for such continuance. I have learned to-day that this man Nelson referred to by the last witness is in San Pedro also, and I’m informed that he will testify to this same conversation. I would like when we put Captain Curtis on the stand when he is here, to be able to have Mr. Nelson testify too. I will try and get him.

Mr. CAMPBELL.—Mr. Lillick, you have had just as good an opportunity as I have had to prepare for this case. Your excuse for wanting the continuance to me was that you wanted to get Captain Curtis here. He is down there on a wrecking expedition. I don't think it is right to ask for a continuance to call for impeaching witnesses.

Mr. LILLICK.—You misunderstand me. The testimony of Captain Curtis is what I want the continuance for. Of course, the testimony will be only cumulative. I want to make my position clear before the Court and I want to put on the testimony of that man Nelson, if I can. Of course I will submit to whatever ruling the Court desires to make. I simply want to make the statement so that my client's rights might be preserved.

Mr. CAMPBELL.—I am not going to stand in your way of putting in any testimony you wish to.

The COURT.—There is a consent that the testimony of Captain Curtis be taken.

Mr. CAMPBELL.—Yes, Captain Curtis.

The COURT.—Well, that is as far as we will go.

Mr. CAMPBELL.—At the same time if the Court thinks this other testimony should be put in they can put it in. [181—153]

The COURT.—I don't like to try a case in that way, having witnesses called later. I think the case ought to be tried all at once.

Mr. LILLICK.—Of course, I cannot control the man. He is not in our employ. I could have *been* subpoenaed him and he would have been here at the

(Testimony of Richard Dickson.)

time the case was last called for trial.

The COURT.—Have you any further testimony? Has anybody any further testimony? I understand then that the testimony is closed except for the testimony of Captain Curtis?

Mr. CAMPBELL.—With the Court's permission I would like to recall Captain Dickson to secure his denial, if he does deny it, of the conversation with this second man. I think the conversation given this morning was the conversation in the captain's room.

The COURT.—Well, you may recall him. I understand his testimony to have been that at no time and at no place or to no person did he make any such statement.

Mr. CAMPBELL.—That was my understanding about it.

[Testimony of Richard Dickson, for Claimant (Recalled).]

RICHARD DICKSON, recalled.

Mr. CAMPBELL.—Q. Did you hear the testimony of this man who was just on the stand?

A. I did.

Q. Did you ever make that statement to him?

A. I absolutely deny every bit of it. I may have made the statement that I went to get the cup of coffee, and so forth, but the part about the bridge and giving the order I absolutely deny.

Q. Did you ever make that statement to anybody?

A. Absolutely no such statement whatsoever.

[Endorsed]: Filed May 8, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [182—154]

**Testimony Taken in Open Court on November 18th,
1913.**

Tuesday, November 18, 1913.

[Testimony of Lebbeus Curtis, for Libelants.]

LEBBEUS CURTIS, called for the libelants,
sworn.

Mr. LILLICK.—Q. Where do you reside, Mr. Curtis? A. Berkeley.

Q. What is your occupation?

A. Marine surveyor.

Q. What has been your experience, Captain, in reference to going to sea?

A. It has been about 15 years.

Q. During those 15 years what positions have you occupied upon vessels?

A. Everything from the deck department, from seaman to master.

Q. How many years during that time have you been master of vessels?

A. Between 5 and 6 years.

Q. During that period will you state to the court some of the steamers upon which you have been master?

A. The American steamer "Santa Rita," the American steamer "Santa Maria," the American steamer "Lansing," the American steamer "Argyle," the British steamer "Hectan." I think that is all.

Q. How do those various steamers compare in size with the "Argyle," in a general way?

A. Well, all larger.

Q. You speak of having been master at one time

(Testimony of Lebbeus Curtis.)

of the "Argyle." How long were you master of the "Argyle"? A. About 25 or 28 days.

Q. How long ago?

A. I think it was September, 1911.

Q. During the period when you were captain of the "Argyle" did you have occasion to notice how the vessel steered and how her steering gear worked?

A. Yes.

Q. Will you state how it worked. as to quickness or slowness? [183—155]

A. The "Argyle" answered her helm slowing in the beginning of a movement and then picked up very fast, swung very fast after the first few moments.

Q. Captain, in your opinion what should the watch officer on the bridge do with respect to a vessel approaching at night within a mile or two miles, say, whose lights show off his starboard bow within $1\frac{1}{2}$ to 2 points and apparently on about a parallel course, as to watching that vessel?

A. He should watch her very closely.

Q. If those lights upon the approaching vessel showed no change of bearing within a period of a minute or such a matter after they first came in sight, what should the watch officer in your opinion do with respect to paying attention to the approaching vessel?

A. He should give it the closest attention.

Q. If those lights subsequently showed any change of bearing, what in your opinion should he do?

A. Call the master.

(Testimony of Lebbeus Curtis.)

Q. Captain, what would you say as to the failure of a bridge officer upon the "Argyle" at night who had the lights of an approaching vessel upon approximately a parallel course reported to him, and who saw the lights and determined the vessels would pass within a thousand feet of each other, and yet paced back and forth across the bridge of the "Argyle" and only watched the lights of this approaching vessel when he arrived at the end of the bridge on the starboard side?

Mr. CAMPBELL.—We object to the hypothetical question, if it please the Court, for the reason it is not based upon the facts established in the case. There are no facts in this case to show that the officer on the bridge of the "Argyle" only watched the lights of the "Gualala" when he was on the starboard [184—156] side of the bridge.

Mr. LILLICK.—My recollection is that this witness McAlpine testified that he saw these lights on the starboard side of the bridge when they were reported to him by the lookout, and that then he walked back and forth on the bridge and he did not look at the lights except when he got back on the starboard side of the bridge.

The COURT.—The objection will be overruled. We will take the testimony.

A. I should say that he was so lacking in judgment or responsibilities of his position that he was not fit to have command of the vessel's bridge.

Mr. LILLICK.—Q. Do you remember of going on board the "Argyle" after she arrived in port im-

(Testimony of Lebbeus Curtis.)

mediately subsequent to her collision with the "Gualala?" A. Yes.

Q. When did you go on board of her?

A. What time?

Q. Yes, if you remember the day, and about the time of day?

A. I don't remember the time of day, whether it was morning or afternoon. It was within half an hour after she arrived.

Q. At that time, Captain, do you know whether or not any of the officers of the company owning the "Argyle" were on board?

A. Yes, Mr. Tubby, the manager of the marine department and I think Captain Ferris, the superintendent.

Q. Did you see the mate's log-book while you were on board? A. Yes.

Q. Where was it? A. In the mate's room.

Q. What did you do about it, as to observing it?

A. I took a copy of the entries in regard to the collision. [185—157]

Q. I hand you the mate's log-book which is marked Libellant's Exhibit 3 and ask you to state to the Court what the condition of that log-book was upon the page dated Tuesday, October 15, 1912, as to what upon that page was written in the log at the time you saw it, the day after the collision—the day the vessel arrived in port after the collision.

A. Only these remarks in the remark column here.

Q. What are they?

(Testimony of Lebbeus Curtis.)

A. 2:59 lookout reported green light two points on starboard bow. Altered course $\frac{1}{2}$ point to port; received one whistle from vessel; 3:05 reversed engines full astern; 3:07 collided with steamer "Gualala"; lowered boats, picked up crew of "Argyle," called steamer "Daisy Freeman" to stand by wreck and proceeded towards San Francisco at 5:10; two men seriously injured.

Q. What upon that page was not there that now appears when you saw the log on the "Argyle"?

A. "Answered with one blast, gave three blasts, helm hard to port."

Q. What occurred, Captain, while you were looking at the log and making a copy of it?

A. Captain Dixon came down and asked the first officer for the log-book.

Q. Did Captain Dixon remain there while you were making a copy?

A. Yes, he waited impatiently for the log, or seemed to be in a hurry to get it.

Q. Do you know the dimensions of the "Gualala" in a general way, Captain?

A. Roughly they are about 120 feet length, and about 30 feet beam.

Q. What would you say about the probability of the "Gualala" steering when she was loaded coming down the coast as to her yawing or keeping a straight course?

Mr. CAMPBELL.—We object to the question as it has not been [186—158] shown that this wit-

(Testimony of Lebbeus Curtis.)

ness has had any experience of steering the "Gualala."

Mr. LILLICK.—I withdraw the question.

Q. Captain, have you had any experience upon vessels of approximately the size of the "Gualala" steering at sea loaded as she was at the time of this collision?

Mr. CAMPBELL.—Same objection, no foundation for examining this man as an expert on the steering of the "Gualala" unless he is shown to have experience steering with that particular vessel.

Mr. LILLICK.—The captain's experience, if the steering upon all of these steam schooners of about the size of the "Gualala" is the same as to yawing, would, I think, be a sufficient foundation.

The COURT.—Is that true, that they all act the same?

Mr. LILLICK.—I will ask the witness, if the Court please.

Q. Captain Curtis, is it true that vessels of approximately the size of the "Gualala" loaded as she was upon that occasion act about the same as to yawing or steering straight?

A. Well, there would naturally be a difference in the individual vessels. Vessels of the class of the "Gualala," loaded, usually steer badly; that has been my experience.

Q. And by steering badly what do you mean with respect to the variation in the steering course as to points?

A. I would say under the conditions that the

(Testimony of Lebbeus Curtis.)

“Gualala” was proceeding that night she might possibly yaw a point on either side of the given course.

Q. Captain, assuming the “Argyle” a steamship 320 feet long, loaded making 8 knots an hour and on a northwest $\frac{1}{2}$ west course, going up the coast, observed the lights of the “Gualala,” a steam schooner 120 feet long, loaded, coming down the Coast upon a [187—159] southeast course, and making 8 knots an hour, a point and a half on her starboard bow and that thereupon the “Argyle” starboarded her helm and paid off half a point for about a minute and a half and then continued starboarding slowly in order to keep the “Gualala” on such a bearing that the lights of the “Gualala” should continue to show about one and a half points off the “Argyle’s” starboard bow, and then observed, in answering a whistle from the “Gualala” that the “Gualala” showed only her port light and immediately the helm of the “Argyle” was changed to hard aport, and during the next two and a half minutes the engines of the “Argyle” were reversed full speed, would it have been possible for the “Argyle” to have come into collision nearly head on with the “Gualala” heading south southwest? A. I think so.

Mr. CAMPBELL.—We object to that question for the reason the hypothetical question does not contain a statement of the facts descriptive of the navigation of the “Gualala.”

Mr. LILLICK.—Your Honor will remember the hypothetical question asked by Mr. Campbell upon the trial of the cause; that question was based, as

(Testimony of Lebbeus Curtis.)

I remember it, upon the testimony of Mr. Gibbs. This testimony is based absolutely and entirely upon the testimony of D. S. McAlpine, the officer on the "Argyle" and every feature of it is based upon his testimony without any variation at all.

The COURT.—If that is true, the objection is overruled.

Mr. LILLICK.—We will be able to verify it, and if it is not, I consent the question and answer may be stricken out.

Q. Captain, have you prepared a chart showing how that collision could have occurred?

A. Yes. [188—160]

Q. Under the circumstances detailed—I think we had better put this on the Court's desk, Mr. Campbell. I will ask you whether this chart is a chart which you have prepared. A. Yes.

Q. I will mark this course A, B and C, and ask you what this represents and upon what you base the distance as well as the appearance of the courses.

A. Well, primarily the whole chart is constructed on a scale of $\frac{1}{2}$ inch to 100 feet. The first position A is based on McAlpine's testimony where he first sighted the "Gualala" $1\frac{1}{2}$ points on his own star-board bow; this black line is my adopted line of the southeast course of the "Gualala" heading north-west by $\frac{1}{2}$ west; subsequently the "Gualala" went out on this line, following out McAlpine's testimony and the log-book to the next $1\frac{1}{2}$ minutes, and from there based on Mr. Dickie's testimony, that was about the probable point of the "Argyle" under

(Testimony of Lebbeus Curtis.)

those conditions, allowing her a radius of 1,800 feet, which he gave her, also based on my experience in handling the vessel, allowing a period of 2 minutes, I think it is, between this position, and the time the vessel reached this position at the time of the collision.

Q. Now, what does the line or curve from A to—

A. (Intg.) I should have stated that I took into consideration the $\frac{1}{2}$ point that the log-book states the course was altered to port, McAlpine's testimony that he altered the helm; he could come any closer than that.

Q. What does the course from A to E to F represent?

A. That represents the movements of the "Argyle" following McAlpine's testimony alone, without the log-book, and Mr. Dickie's figures of what the vessel would swing in a given length of time, [189—161] or the radius of her swinging, without taking into consideration the fact that the vessel was backing which would have made this circle materially smaller, going very much closer, if the engines had been backed; that would show that had the course been followed out, the movement of that vessel, according to Mr. McAlpine's testimony and Mr. Dickie's testimony as to the probable movement, she should have landed up here and could not have been any closer.

Mr. LILLICK.—I offer the chart in evidence and ask to have it marked as Claimant's Beadle's Exhibit 4.

(Testimony of Lebbeus Curtis.)

Cross-examination.

Mr. WALL.—Q. Captain, did you ever have any experience going to sea on this coast on lumber schooners? A. Yes.

Q. What is the extent of your experience?

A. About 4 months in the employ of the Hammond Lumber Company.

Q. Any of the vessels that you went to sea on of the general character of the “Gualala”?

A. Well, yes, one.

Q. Captain, as a seafaring man, is it not generally known by seafaring men how the lumber schooners of the general type of “Gualala” steer when they are loaded with lumber? A. Yes.

Q. Or anything similar to them?

A. Yes, I think it is generally recognized.

Q. And when they are deeply laden, is it not generally known by seafaring men that all yaw to a greater or less extent?

A. I think it is generally recognized that they all steer badly.

Q. Now, Captain, in testifying as to the way the “Argyle” answered her helm you stated that she was slow in starting, and thereafter her movement was rapid? A. Yes.

Q. Having once put her helm over either way and having started to move and acquired any sort of rapid movement, what was the fact if the helm was put over the other way as to checking that movement?

[190—162] A. In regard to time, you mean?

Q. In regard to time, yes, and as to whether or not

(Testimony of Lebbeus Curtis.)

she responded to the counter movement slowly or whether she responded to the counter movement quickly?

A. Well, she would respond to the counter movement slowly.

Cross-examination.

Mr. CAMPBELL.—Captain, you examined thoroughly the testimony which had been given in this case by the mate Gibbs of the “Gualala”? A. Yes.

Q. You found no testimony in that case that the “Gualala” was yawing, did you? A. No.

Q. Now, why would you call the master of your vessel if there was not an appreciable change in the bearing of the lights of the approaching vessel, if you were of the opinion that she was far enough off your starboard bow, to clear your bow 1000 feet?

A. I do not consider 1000 feet to be a safe distance.

Q. What distance—

A. (Intg.) For vessels in an open seaway at night.

Q. What distance do you require for passing of vessels?

A. I should say anywhere from $\frac{1}{4}$ of a mile upwards.

Q. Then 1,500 feet would be a safe distance, but 1,000 would not?

A. I think 1,000 or anything less would not.

Q. Why would 1,000 feet be an unsafe distance?

A. It is too close.

Q. Why?

A. Taking into consideration the possibility of bad

(Testimony of Lebbeus Curtis.)

steering qualities of the other vessel, an unknown factor.

Q. Then you consider 1,000 feet an unsafe distance because you entertain a presumption that the navigating officer of the other vessel would not keep his course so as to pass 1,000 feet off?

A. Possibly not. [191—163]

Q. You are assuming, then, the danger because of a further presumption that the navigating officer of the vessel will not follow the rule of the road?

A. No, not necessarily.

Q. Would he follow the rule of the *rule* if he changed his course when he was passing green to green 1,000 feet off? A. No.

Q. Every time that you have been master of a vessel and you have come down the coast or up the coast and met a vessel which you knew was going to pass you 1,000 feet were you called on the bridge by your navigating officer? A. Those are my orders.

Q. When you pass within 1,000 feet? A. Yes.

Q. Was that done?

A. To the best of my knowledge and belief.

Q. That again was based upon the presumption that the bridge officer would not obey the rule of the road?

A. Not based on the assumption that he would not obey the rule of the road, but that he might—

Q. (Intg.) That he might not obey it?

A. Might not be able to do so.

Q. Why wouldn't he be able to do so?

(Testimony of Lebbeus Curtis.)

A. Possibly from bad steering on the part of the other ship.

Q. *Do mean* to tell me that a schooner of the size of the "Gualala" would yaw 1,000 feet, would be coming down and taking a path 1,000 feet in width?

A. Not necessarily.

Q. She would not do it?

A. I hardly think so.

Q. Don't you know she would not do it?

A. No, I don't know that she would not do it. I am not familiar with the "Gualala."

Q. You don't know anything about the "Gualala's" steering, do you? A. No.

Q. Notwithstanding the fact that you have been interested in the vessel? A. No. [192—164]

Q. You were interested in her, were you not?

A. No.

Q. Your father was, was he not? A. Yes.

Q. Your family? A. Yes.

Q. Now, if you were on the bridge of the "Argyle" and saw a light on your starboard bow, a green light at such a distance that in your mind the other vessel was holding a course that they would pass you 1,000 feet off, how would you maintain your watch on the bridge?

A. I should watch that vessel very closely.

Q. Would you stand in one position?

A. Probably, yes.

Q. On the starboard side of your bridge?

A. Yes.

Q. Keeping your eye on that light all the time?

(Testimony of Lebbeus Curtis.)

A. Yes.

Q. What would you be doing with your port side of your vessel during that interim?

A. Well, it would be possible to glance across the poop of the vessel, toward the port side, if necessary.

Q. Would you keep your eye on the green light all of the time? A. Not every second, no.

Q. Would you not and is it not customary for the officers to pace the bridge when they are on watch?

A. Yes.

Q. And if an officer on the bridge sees a light on one side or the other a distance off which he judges is a safe passing distance, is it not customary for the officer to pace the bridge keeping a lookout over both bows? A. Yes.

Q. What is it about the "Argyle" that makes her take up her change of course slowly, when her helm is put over. Do you know the construction of that ship? A. In a general way, yes.

Q. Do you know what the effect of a bar keel would have on the readiness of response to the helm?

A. I imagine that it would make her answer more slowly.

Q. That is what makes the "Argyle" sluggish, isn't it? A. Well, I don't know. [193—165]

Q. Don't you know whether that ship has a bar keel or not? A. I know she has a bar keel.

Q. Isn't that what makes her more sluggish compared with vessels with a flat keel?

A. I don't know.

Q. You simply know as a fact simply she is slug-

(Testimony of Lebbeus Curtis.)

gish in response to an altered helm? A. Yes.

Q. I understood you to say that if you have her swinging under a starboard helm or hard astarboard helm going 8 knots that it would take some time to stop that swinging to port under the starboard helm by throwing your helm hard aport and changing her course to starboard? A. Yes.

Q. She would be slow, would she not, to check her swing to port under her first starboard helm and to pick up her helm to starboard under the altered hard aport helm? A. Yes.

Q. Now, where was the pilot-house located on the "Gualala"?

A. Just a little forward of the smokestack, on the forward end.

Q. Where is it with respect to the forward end or after end or middle section of the vessel?

A. I should think about roughly $\frac{3}{5}$ of the length of the vessel from the bow.

Q. Beyond the center of the vessel? A. Yes.

Q. How many feet per minute would the "Argyle" make traveling at 8 knots an hour?

A. Roughly about 1,600 feet, I should think.

Q. Is your drawing based upon that number?

A. I don't remember now whether that is the correct number of feet that I worked out at the time. I don't recollect that that is the correct figure.

Q. Just think it over again and tell me how far the "Argyle" would travel in a minute making 8 knots. I would like you to figure it.

A. About 800 feet.

(Testimony of Lebbeus Curtis.)

Q. Isn't it, as a matter of fact, $810.66\frac{2}{3}$ feet?

A. Yes. [194—166]

Q. Now, how long would it take the "Gualala" to reduce from 8 knots to 1 knot by reversing full speed astern?

A. I don't know. I never handled the "Gualala."

Q. How long in your judgment would it take?

A. To reduce her to 1 knot.

Q. If you were running along at 8 knots under a hard aport helm and suddenly reversed full speed astern, how long would it take to reduce her speed to 1 knot?

A. I imagine about $2\frac{1}{2}$ minutes or 3 minutes.

Q. How far would she run in that time?

A. Probably 1,200 or 1,400 feet.

Q. 1,200 or 1,400 feet? A. Yes.

Q. What would you say of the mate's testimony that he reduced from 8 knots to 1 knot in one minute?

A. I do not believe it is possible.

Q. You do not think it is possible?

A. Taking into consideration the power of the "Gualala."

Q. Do you know what the power is?

A. No, but I know she is a low-power vessel.

Q. How do you know that if you don't know what the power is?

A. I have seen the engines and I am familiar with the general type of that vessel.

Q. What distance would you give us then that she would run?

A. I should think from 1,200 to 1,500 feet.

(Testimony of Lebbeus Curtis.)

Q. You think from 1,200 to 1,500 feet? A. Yes.

Q. You think it would take her 3 minutes?

A. I should think so, 2 or 2½ or 3 minutes.

Q. How long would it take the "Gualala" to swing 1½ points to starboard under a port helm if the helm were ported as usually done [195—167] by a quartermaster, by receiving a command such as a master would give?

Mr. LILLICK.—I submit the witness has testified he did not know how the "Gualala" steered nor has he been on her.

A. I am unable to answer the question.

Mr. CAMPBELL.—You *are* produced him here as an expert?

The COURT.—If he don't know he can say so.

A. I don't know. I am not familiar with the "Gualala's" steering.

Mr. CAMPBELL.—Q. How long would it take the "Gualala" to swing 1½ points to starboard under a port helm if the helm were ported as usually done by a quartermaster when he is given an order to port, assuming that the "Gualala" is making at the time eight knots? A. Probably half a minute.

Q. Within what distance when traveling at 8 knots would the "Gualala" have payed off a point, half the distance of 810 feet?

A. I should think so.

Mr. CAMPBELL.—Now, with the Court's consent, I should like to have the witness make me some drawings. I want him to do it on that table. I will not prolong this examination any farther than I have

(Testimony of Lebbeus Curtis.)

to, but I feel that I have got to cross-examine the witness to get his knowledge.

Q. What is the length of the "Argyle"?

A. 320 feet, I believe.

Q. What is the length of the "Gualala"?

A. I think about 120 feet.

Q. Now, I will ask you to use a scale of 1 inch to 100 feet and I will ask you to take these two models and see if they are practically to a scale of the two vessels? A. Roughly they are.

Q. That is as close a scale as you could get to them?

A. Yes.

Q. Will you lay down upon this chart a straight line the length of [196—168] this which we will assume to represent a southeast course. I want you to start from the point "X" and lay off a straight line. Will you measure a mile off on that for me, or 1 knot, at the scale of 1 inch to 100 feet?

Mr. WALL.—I will ask what distance he assumes as his mile.

The WITNESS.—6,080 feet, a nautical mile.

Mr. CAMPBELL.—Q. Mark that 5,500 feet at the end. Mark that course southeast. Will you take and place the model of the "Gualala" at the left-hand end of the line and draw her outline on it?

A. Yes.

Q. Now, assuming that that line that you have drawn is the southeast course of the "Gualala," I want you by means of this compass to draw me a line from the bow of the "Gualala" in the position in

(Testimony of Lebbeus Curtis.)

which I mark it, extending $11\frac{1}{2}$ points on her port bow. A. Yes.

Q. Now, extend that line out for 5,500 feet. Now, place the model of the "Argyle" upon the line which you have just drawn, the line which I will mark A-C, marking the southeast course A-B; I want you to place the "Argyle" on the line A-C, which I understand is extended $11\frac{1}{2}$ points from the port bow of the "Argyle" so that the "Argyle" will only be showing to the "Gualala" her red light?

A. Assuming that the "Argyle's" side light screens are correct.

Q. There is nothing in the case to the contrary. Will you draw an outline of the model, please? Now, mark that with the figure 2. The figure 2 then represents the position of the "Argyle" if observed a point and a half on the port bow of the "Gualala" at a distance of 5,500 feet, and at the time showing her red light, and not showing her green light to the "Gualala." A. Yes.

Q. Now, you have testified that the "Gualala" would swing $11\frac{1}{2}$ points to starboard under a port helm in half a minute?

A. That is my judgment. [197—169]

Q. Well, yes, we are going on your judgment now. I wish that you would show the position of the "Gualala" with respect to position 1 when she has proceeded half a minute on her course or 406 feet, swinging to starboard $11\frac{1}{2}$ points under a port helm?

A. Now, Mr. Campbell, the distance the "Gualala" would be away from her original southeast course, I

(Testimony of Lebbeus Curtis.)

have no way or means of determining from your information or my knowledge.

Q. My question embodies it. You testified that in half a minute she would travel 406 feet? A. Yes.

Q. And that she would swing under a port helm $11\frac{1}{2}$ points in the half minute? A. Yes.

Q. You can show me the position she would occupy at the end of the $\frac{1}{2}$ minute, can't you, by means of the dividers, you can pick out 406 feet and surely can draw a line of $11\frac{1}{2}$ points?

A. Well, to get that anywhere near accurately, you would have to determine the arc of the circle she was swinging on.

Q. You are a shipmaster. Can't you draw me the position that the "Argyle" would be in at the time she has traveled 406 feet under a port helm and has swung $11\frac{1}{2}$ points in that time? A. Roughly.

Q. Can't you do it accurately? A. No.

Q. Go ahead and do it the best you can. Draw me a line on the starboard bow of the "Gualala" then $11\frac{1}{2}$ points. A. I have drawn that.

Q. On the starboard bow? Draw it accurately.

A. I am using the number I have laid off there.

Q. Measure me 406 feet along that line. Wouldn't that be the point where the "Gualala" would be?

A. No, not exactly.

Q. Wouldn't she have swung $11\frac{1}{2}$ points in that time?

A. She would [198—170] be heading $11\frac{1}{2}$ points away from the original course.

Q. That would be where her bow would be then?

(Testimony of Lebbeus Curtis.)

A. Yes.

Q. Place her bow at that point.

A. You understand, Mr. Campbell, she would be swinging on an arc; she might have been closer to the line or farther away.

Q. Place her where, in your judgment, she would be.

A. There.

Q. Will you mark that position "3"? A. Yes.

Q. As near as you can judge she would then have been in the position 3 a half minute after she has ported her helm and then bearing $11\frac{1}{2}$ points from her southeast course? A. Yes.

Q. Now, assume that at the time the "Gualala" was at the position marked 3, her helm was put hard aport and she still continued ahead at 8 knots, indicate where in your judgment she would have been at the expiration of next half minute. She would be approximately 406 feet further, would she not?

A. Yes.

Q. Show me, then, the position she would next occupy having hard aported her helm at position 3.

A. I don't think, Mr. Campbell, I have got sufficient knowledge of the way the "Gualala" handles to give you an intelligent answer.

Q. You have produced here a chart prepared by yourself as an expert. I want you to give me your best judgment on this chart.

A. I might say that my other chart was laid out from the positions of the "Gualala" according to McAlpine's testimony.

Q. You can give in this chart where she would have

(Testimony of Lebbeus Curtis.)

been at end of the next half minute still traveling ahead 8 knots with the helm having been hard aported at position 3.

Mr. WALL.—I do not think the question is fair as the witness stated he does not know how she handles.

Mr. REDMAN.—I do not think it is cross-examination at all. It is evident Mr. Campbell is using the witness to establish his [199—171] theory and not in cross-examination of any of his testimony which was based upon the testimony given by Mc-Alpine.

The COURT.—That seems to be true. The only purpose of this, if it serves any purpose, is to test the qualifications of the witness.

Mr. REDMAN.—It is very clear that Mr. Campbell's intention is to build up his own side with this witness as an expert and rely upon him as an expert to establish those things that he has already sought to establish by his witnesses. It is not an attack on the testimony of the witness at all.

The COURT.—That is true, but I conceive the only purpose of this cross-examination is to test the competency of the witness.

Mr. REDMAN.—That is not the purpose. In other words, he is using the witness as his own to prove his own case. He is trying to show a location here with a view of disputing the testimony of Gibbs; that is why this testimony is going in; it is not attacking the witness at all; he is relying upon him as an expert in aid of his own theory.

(Testimony of Lebbeus Curtis.)

Mr. CAMPBELL.—You have produced a chart here this morning in which this witness has attempted to lay down the course through which the “Gualala” passed based upon Gibbs’ testimony, and he said that he had read over Gibbs’ testimony.

The WITNESS.—Not Gibbs’ testimony.

Mr. CAMPBELL.—Q. Upon whose testimony did you base your maneuvers of the “Gualala”?

A. McAlpine’s.

Mr. CAMPBELL.—I will make the witness my own witness, if the Court rules that it is improper cross-examination, but as long as he is produced here as an expert it seems to me I have a right to test his expert knowledge in any proper way. [200—172]

The COURT.—The only objection is that it is not cross-examination.

Mr. REDMAN.—It is testimony you are relying upon.

Mr. CAMPBELL.—For the purpose of this drawing I will make the witness my own witness.

The COURT.—That is all right.

Mr. CAMPBELL.—Q. Go ahead and lay this down.

A. What base do I work from, Mr. Campbell? As I have stated, I have absolutely no knowledge of the “Gualala’s” movements except as in my other chart they were based upon McAlpine’s testimony as to the bearings of the vessel throughout the whole movement; she never changed a bearing up to the first minute and a half.

Q. We will leave that for the time being. You

(Testimony of Lebbeus Curtis.)

have testified that the "Gualala" proceeding at 8 knots would travel 406 feet, have you not?

A. Yes.

Q. Will you draw me an arc of a circle 406 feet distant from the bow of the "Gualala" at the position 3? A. A circle of what radius?

Q. The arc of the circle 406 feet distant from her, the radius would be 406 feet, would it not?

A. That segment of the circle would be 406 feet.

Q. I want the arc of the circle drawn 406 feet beyond the bow of the "Gualala."

The COURT.—With the bow of the "Gualala" as the center of the circle?

Mr. CAMPBELL.—Yes.

Q. What are you doing now?

A. I am trying to lay out an arc of a circle 406 feet.

Q. Now, Captain, you are a man of some intelligence.

A. I don't understand what you mean. [201—173]

Q. You lay out an arc of a circle the circumference of which circle is 406 feet distant from the bow of the ship?

A. I don't understand, I think, what you mean right now.

Q. Let me draw it for you. Do these dividers measure approximately now 406 feet?

A. I beg your pardon; I misunderstood you.

Q. Is the arc which is marked D-E 406 feet distant from the bow of the "Gualala"? A. Yes.

Q. Now, if the "Gualala" would travel 406 feet

(Testimony of Lebbeus Curtis.)

in half a minute, then at the expiration of the next half minute from position 3 the bow of the "Gualala" would be somewhere on the arc of this circle D-E, would it not? A. Yes.

Q. Show me where on the arc of that circle you think it would be if when the "Gualala" was at position 3 her helm had been hard aported, bearing in mind that when the "Gualala" was at position 3 she was swinging under a port helm?

Mr. LILLICK.—If your Honor please, the witness does not know how rapidly the "Gualala" will answer her helm, nor how she acts, and his answer would be a pure guess; it would be a pure assumption.

Mr. WALL.—Further than that I object to the question because it assumes that the "Gualala" will travel from the arc of the circle in a straight line distant 406 feet.

Mr. CAMPBELL.—You will concede this was the maximum distance she could travel, will you not?

Mr. WALL.—It would be the maximum distance she could travel but the distance might be considerably less.

Mr. CAMPBELL.—Q. Give your best judgment on that.

Mr. LILLICK.—I object to the question upon the ground that the captain has already testified that he does not know how the "Gualala" answers her helm, and that the answer to be of any value [202—174] at all must be based upon a knowledge and an experience with the "Gualala" as to where she would be at the end of the other half minute.

(Testimony of Lebbeus Curtis.)

The COURT.—He has testified he knew what vessels of this type would do, in response to some of your questions.

Mr. CAMPBELL.—You ought not to complain if I take your witness who is produced here by you as an expert.

Mr. LILLICK.—He is not only an expert, but a very good expert.

Mr. CAMPBELL.—He is not my witness.

Mr. WALL.—I object further that the question assumes that the distance that the “Gualala” would travel would be 406 feet in a straight line from the point of the bow to the circle where as it does not appear and cannot appear that the captain knows what distance she will travel when her helm is put to port; she certainly would not travel in a straight line, and her distance might be very much less. Of course this being a trial court the testimony is taken subject to objection, but I want my objection in.

The COURT.—Let your objection go in.

Mr. CAMPBELL.—I think later on you will see that it is eliminated.

Mr. WALL.—I think all this testimony goes in subject to objection.

Mr. CAMPBELL.—All the objections are in. Will you do what I have asked you, please?

The COURT.—Q. Where on that line, or if not on that line, where in your judgment would be the bow of the “Gualala” at the end of the next half minute?

Mr. CAMPBELL.—Q. If she had aported at

(Testimony of Lebbeus Curtis.)

point 3 when she was [203—175] proceeding under her port helm at that time?

A. I am assuming that that vessel would swing about 4 points in half a minute under those conditions. That is merely a good guess, Mr. Campbell.

Q. That is your judgment, isn't it, Captain?

A. Yes.

Q. She will be in the position marked 4. In that half minute she could not travel more than the distance from 3 to 4, could she? A. No.

Q. So that you are allowing the very maximum when you place her at that point? A. Yes.

Q. Now, assume that when she is in position 4 she reversed full speed astern with her helm hard aport and continues reversing with her helm aport until she has reduced her speed from eight knots to 1 knot, and at that time when she reaches the speed of 1 knot she is on a south southwest course. I want you to give me the position of the vessel, at the time she strikes the south southwest course.

A. That is the line she travels about 1300 feet; it won't work out. She would have swung considerably beyond the south southwest course; you could not possibly work into that position.

Q. Put her on a south southwest course where you think she would be.

Mr. WALL.—Is she reversing now according to that, are her engines working astern?

The WITNESS.—The period of time was what?

Mr. CAMPBELL.—A minute afterwards, or when it reaches the south southwest course.

(Testimony of Lebbeus Curtis.)

A. What was the period of time between this position?

Q. The mate has testified to one minute, but he has also testified that from the time he reversed at point 4 and at the time of the collision she had swung to a south southwest course. [204—176]

A. One minute's time.

Q. One minute's time. You have testified that in your judgment it would have reduced from 8 to 1 knots in 2 minutes or $2\frac{1}{2}$ minutes. I am taking your judgment.

A. That is about the distance she would have travelled.

Q. Put her on the south southwest course. That in your judgment is where she would be at the point marked 5? A. Yes.

Q. That shows the distance she would travel, reversing, and at that time at point 5 she would be on a south southwest course, in your judgment?

A. In my judgment she would not be on a south southwest course.

Q. When she reduced her speed to one knot she would be in position 5? A. Yes.

Q. Where do you think she would be, still further to the left? A. Still further to the left.

Q. You think she would have gone farther than position 5? A. Yes.

Q. In reducing 8 knots to 1?

A. In the period given for backing.

Q. In reducing from 8 knots to 1 knot by reversing full speed astern on a hard aport helm, in your judg-

(Testimony of Lebbeus Curtis.)

ment would she have been further than position 5?

A. Yes.

Q. If she were on the south southwest course at the expiration of that time, she would be at the position 5? A. Yes.

Q. Now, will you draw for me a line extended 2 points on the port bow at the position 4, being the position at the time she reversed full speed astern.

A. 2 points on the port bow?

Q. Yes, just extend that line 2 points from the port bow, and mark that? A. Yes.

Q. Now, Captain, if the "Argyle" was observed by the mate of the [205—177] "Gualala" when the "Gualala" was at the position 1, when her helm was first ported, that the "Argyle" is observed a point and a half on the port bow of the "Gualala," then the "Argyle" was somewhere along the line A-C, was she not? A. Yes.

Q. If at the time the "Gualala" had advanced to the position marked 3 the "Argyle" had not shown her green light to the "Gualala," I will ask you if it is not a fact that the "Argyle" would have been required to have been somewhere to the eastward of the line extended from the bow of the "Gualala" at position 3 to the bow of the "Argyle" at her position 2? A. Somewhat to the eastward of the line?

Q. Yes, mind my question: That if the "Argyle" was first observed when the "Gualala" was at the position 1 a point and a half on the "Gualala's" bow not showing her green light to the "Gualala" and thereafter the "Gualala" advanced to the position 3

(Testimony of Lebbeus Curtis.)

and the "Argyle" had still not shown her green light to the "Gualala," would not it necessarily follow that the "Argyle" in the meantime was somewhere to the eastward of a line drawn from her position 2 to the "Gualala's" position 3?

The COURT.—Would not that depend on the way the "Argyle" was heading?

Mr. CAMPBELL.—No, without showing her green light, mind you.

The COURT.—At any time.

Mr. CAMPBELL.—At any time, without showing her green light to the "Gualala"?

Mr. REDMAN.—It seems to me it would necessarily, your Honor, depend upon the way the vessel was lying, regardless of whether she had changed her position or not; she might have changed her position away from here. It seems to me the question is subject to the [206—178] objection the Court mentions, it depends upon the way she is heading.

Mr. CAMPBELL.—I will ask the question a different way.

Q. If the "Argyle" was observed in position 2 which we have described, when the "Gualala" was at position 1 and the "Gualala" advanced under a port helm to position 3, could the "Argyle" have crossed the line which I have drawn from position 3 to position 2 without having shown her green light to the "Gualala"? A. No.

Mr. LILLICK.—Are you assuming in the position that you have it there that it was at that point that

(Testimony of Lebbeus Curtis.)

the lights of the "Argyle" were first seen from the "Gualala"?

Mr. CAMPBELL.—That is the position where she ported. I am taking the most favorable aspect to you.

Q. Now, asking my question in the first form, if the "Argyle" did not show her green light to the "Gualala" she must have, during the interim that the "Gualala" was advancing from 1 to 3, have been to the eastward of this line? A. Yes.

Q. I will draw the line. Now, that would be true, would it not, Captain, whatever the distance the "Argyle" was from the "Gualala" if the "Argyle" was a point and a half on the "Gualala's" bow?

A. Yes.

Q. Now, will you explain to me how it would be possible for the "Argyle" to have gotten from the position to the eastward of the line from 3 to 2 so as to have reached a position 2 points on the port bow of the "Gualala" when she was at position 4, and not have in the meantime in changing from her former position to the position 2 points on the port of the "Gualala" shown her green light?

A. It does not admit of any explanation, it is impossible.

Q. Then, if it be a fact that the "Argyle" was seen a point and a [207—179] half on the "Gualala's" port bow when the "Gualala" was at point 1, it was not possible for the "Argyle" to have been 2 points on the "Gualala's" port bow when the "Gualala" was at position 4 where she reversed, if at the time

(Testimony of Lebbeus Curtis.)

the "Gualala" reversed the green light of the "Argyle" first came into view? A. No.

Q. It would be impossible for her to move from any place along the line, the $1\frac{1}{2}$ point line off the "Gualala's" port bow to the course 2 points off the "Gualala's" point bow when the "Gualala" is at 4, without having shown her green light? A. Yes.

Q. So, then, in your judgment, the mate of the "Gualala" must have been mistaken when he testified that he first saw the green light of the "Argyle" two points on his port bow at the time when he reversed, and had not seen the green light before that although when he first observed the "Argyle" she was $1\frac{1}{2}$ points—he must have been mistaken?

A. He must have been mistaken.

The COURT.—Does that mean when the green light first came into the view of the "Argyle"?

Mr. CAMPBELL.—Yes, because he testified, the Court will remember, that up to the time he reversed he had seen her red light, and he reversed upon seeing her green light; that is when the green light first came into view.

Q. You say in your judgment that the "Gualala" advanced from position 4 to position 5 after reversing until she reached a course south southwest, that if the "Gualala" at the time she was in position 4 was advancing at 8 knots an hour under a hard aport helm and then reversed and the collision came when she had *swing* to a southwest course, reducing her speed to about to 1 knot, she would, in your judgment, be at position 5 on the south southwest course?

(Testimony of Lebbeus Curtis.)

A. Yes. [208—180]

The COURT.—He has said that if she was on the south southwest course that is where she would be.

Mr. CAMPBELL.—Q. I want you to draw for me a circle 810 feet distant from the bow of the “Gualala” in position 5? A. Is that about it?

Q. Well, your judgment? A. All right.

Q. Have you drawn it? A. Yes.

Q. I will mark the arc of the circle H—I. Now, Captain, will you draw me a line from the position 5, an arc of a circle 1620 feet distant; make it with this string? A. From position?

Q. Yes, I want that arc, but I want it drawn so that it will cut this line. A. Yes.

Q. I will mark this K—L. Captain, how far do you think that the “Gualala” reversing full speed astern, when she is travelling 8 knots an hour would go in a minute? A. In the first minute?

Q. Yes.

A. Oh, I should say about 600 feet; something like that.

Q. Measure it off and lay the “Gualala” in such a position on a south southwest course, please?

A. Lay that off on a south southwest course?

Q. Yes. That would be the position of the “Gualala” a minute after she had reversed at position 4 and swung to a south southwest course?

A. Yes, No. 6.

Q. Now, will you draw me the arc of the circle 810 feet distant from there; that is the distance it would travel in one minute. It will be the arc M—N?

(Testimony of Lebbeus Curtis.)

A. Yes.

Q. Now, then, Captain, I have understood your testimony to be that if the "Argyle" observed a point and a half on the "Gualala's" port bow had not shown her green light to the "Gualala" at the time the latter reached the position 3 then the "Argyle" must have been [209—181] somewhere above the line drawn from 3 to "Argyle" position 2? A. Yes.

Q. Now, if the "Gualala" first saw the "Argyle's" green light when the "Gualala" reached the position 4, the "Argyle" must have been prior to that moment somewhere above the line drawn from 4 to 2?

A. Yes.

Q. At the time the "Argyle's" green light came into view to the "Gualala" at the position 4, the "Argyle" must have been somewhere here, must have been somewhere along the line from 4 to 2?

A. Yes.

Mr. WALL.—You mean if the "Argyle" had not changed her course?

Mr. CAMPBELL.—If she changed her course or not.

Q. Could the "Argyle" have been to the south or below the line from 4 to 2 without having shown her green light to the "Gualala"?

Mr. WALL.—You mean that the "Gualala" is in position 4?

Mr. CAMPBELL.—Position 4.

Mr. WALL.—You are assuming the accuracy of the position 4.

(Testimony of Lebbeus Curtis.)

Mr. CAMPBELL.—My examination shows what I am assuming right through.

Q. If the first time the “Gualala” observed the “Argyle’s” green light the “Gualala” is at the position where she reverses, then prior to that moment the “Argyle” if she has not shown her green light to the “Gualala” must have been above a line drawn from the bow of the “Gualala” at the time she reversed to the original position of the “Argyle”?

A. Yes.

Q. If she were on the line at that moment from position 4 to position 2 and the collision took place at position 5, she would be 1620 feet distant from the point of collision when she was at the point marked O on the line 4-2, would she not?

A. Repeat that again.

The COURT.—That is evidence. That is a matter of drawing. [210—182]

Mr. CAMPBELL.—Q. If the collision took place at the point 6 a minute after the “Gualala” advanced from the position marked 4 then at the time the “Gualala” at 4 first saw the green light of the “Argyle,” the “Argyle” was in the position approximately P, was she not? A. Yes.

Q. Now, if the collision took place at the point marked 6, a minute after the “Gualala” reversed at the point 4 then the “Argyle” must have been at the point P? A. Yes.

Mr. LILLICK.—You mean on the line marked P; you don’t mean at the point P?

(Testimony of Lebbeus Curtis.)

The WITNESS.—At the point P, it must have been.

Mr. CAMPBELL.—Q. Will you take the model of the “Argyle” and show me the maneuver that you would put her through to bring her into a head-on collision with the “Gualala” at the point 6 taking her at the point P? A. I could not do it.

Mr. WALL.—You mean, assume that the “Gualala” never saw the “Argyle’s” green light up to that point?

Mr. CAMPBELL.—That is the testimony in the case.

Mr. WALL.—That isn’t all the testimony. There is testimony to the contrary from your side.

Mr. CAMPBELL.—Q. Show me, Captain, if the “Argyle” was at the point P 811 feet from the point of the collision, or a minute off, when the “Gualala” was at point 4, and in the minute the “Gualala” advanced to the position 6, and in the interim the “Argyle” advanced so she struck the “Gualala” head-on, I want you to show me through what maneuvers the “Gualala” had to go.

Mr. LILLICK.—I object to it; it does not conform to the testimony; there is no testimony that they struck head-on.

Mr. CAMPBELL.—Practically head-on, 30 degrees. [211—183]

Mr. REDMAN.—That isn’t head-on, 30 degrees.

Mr. CAMPBELL.—It is about like that, illustrating. Show me the position.

A. I could not do it, in a minute.

(Testimony of Lebbeus Curtis.)

Q. They could not do it in a minute? A. No.

The COURT.—I suppose you could make drawings here all day to show the collision did not take place at all.

Mr. WALL.—And prove that by experts on either side.

Mr. CAMPBELL.—Q. Now, then, if the collision took place at the point 5 and the “Gualala” first saw the green light of the “Argyle” when the “Argyle” was at the position O, show me through what maneuvers you would have to put the “Argyle” to bring the head-on collision? A. In what time?

Q. The time that the “Argyle” is passing from 4 to 5? A. $2\frac{1}{2}$ minutes, you could not do it.

Q. Now, on your theory the “Gualala” in the time given in reducing from 8 knots to 1 knot would swing still further to the left? A. Yes.

Q. She would swing still further to the left of the “Argyle” so that at that distance the collision could not take place, could it? A. No.

Redirect Examination.

Mr. REDMAN.—Q. Will you draw for me here, please, a line $\frac{1}{2}$ point off to port from this point?

A. $\frac{1}{2}$ point.

The COURT.—Off the “Argyle.”

Mr. REDMAN.—Q. I just want to get at that change of course. The log shows a change of course of $\frac{1}{2}$ point to port.

A. From this position of the “Argyle” (pointing).

Q. Yes, approximately a mile away.

(Testimony of Lebbeus Curtis.)

Mr. LILLICK.—The lights of the “Gualala” were on the starboard bow then of the “Argyle.” It would make a very material [212—184] difference as to which way the “Argyle” is pointing. This diagram shows the lights of the “Gualala” on the port bow of the “Argyle” and, as a matter of fact, from the testimony, I think you are assuming the fact in your question the lights of the “Gualala” were seen on the starboard bow of the “Argyle” and the “Argyle” was in a different position from that, and a half a point to her bow would be a very material difference from that.

Mr. REDMAN.—I understood that, but what I wanted was to show how far from this line here half a point would be at the distance of a mile.

Mr. CAMPBELL.—But you were so technical with me, if you are going into the question of the “Argyle’s” navigation, you will have to make him your own witness.

The COURT.—I will make him the witness of the Court.

Mr. REDMAN.—He is our witness; we put him on. All I want is to show approximately how far on this drawing $\frac{1}{2}$ point would carry you straight out here, $\frac{1}{2}$ point to port; just take the distance of a mile and see how far it would carry you to the left down there.

A. I do not think you can get a mile on this.

Q. This is 5,000 feet. You can make it within a short distance. This log shows that she was running about 8 minutes before the collision in that direction.

(Testimony of Lebbeus Curtis.)

Will you just mark that so that it will be identified, that line, $1\frac{1}{2}$ point to port? A. Yes.

Q. Now, in parentheses in that write the word "log." That has reference to the movement as shown by the "Argyle's" log.

Mr. LILLICK.—Q. Captain, draw the same line from the "Argyle" half a point on her port bow with the lights of the "Gualala" showing on the starboard bow $11\frac{1}{2}$ points, with the "Gualala" at point 1. [213—185]

A. As I understand it, you want a line drawn $1\frac{1}{2}$ a point.

Q. I want a line drawn from the bow of the "Argyle" half a point on her port bow. Will you write in the center of that line, $1\frac{1}{2}$ point on port bow of "Argyle" with light of "Gualala" showing $11\frac{1}{2}$ points on her starboard bow? A. Yes.

Mr. CAMPBELL.—Where is the "Gualala"?

Mr. LILLICK.—The "Argyle" is on the chart at position 2 and the "Gualala" at position 1.

Mr. REDMAN.—That is assuming, Mr. Lillick, as I *under* it, the correctness of the "Argyle's" testimony as to the location of the "Gualala" on his starboard bow when he first observed her?

Mr. LILLICK.—Yes.

The COURT.—Whose testimony?

Mr. LILLICK.—McAlpine's.

Mr. CAMPBELL.—Where is the "Gualala" on that chart?

Mr. LILLICK.—The "Gualala" is somewhere on a line marked 2-1. It may be out there a mile and

(Testimony of Lebbeus Curtis.)

a half or further away.

Mr. CAMPBELL.—Q. Then, Captain, what light would the “Argyle” be showing to the “Gualala”?

A. A green light.

Mr. WALL.—Q. As a matter of fact, Captain, there could not have been any collision occurred under the theory you have been proceeding upon unless the “Argyle” had shown her green light to the “Gualala.” Is that so?

A. Yes, that is correct.

Q. Now, as to those distances and positions which you have put the “Gualala” up there, those are mere guesses on your part, are they not, as to how far the “Gualala” would move and how far she would move after she reversed when she was going 8 knots?

A. Without being familiar with the “Gualala” or without ever having very much experience in handling that class of vessels, that is [214—186] my judgment as to what she did.

Q. Put up in this corner of the diagram, Captain, a rough indication of the course the “Gualala” would take in making 8 knots and then reversing full speed astern during the 1st minute, just a rough indication.

Mr. REDMAN.—He simply would duplicate what he has there only on the other side.

Mr. CAMPBELL.—He has already testified to that, she would swing around here further.

The WITNESS.—And then it would shorten this curve by a little; how much I don't know.

Mr. WALL.—Q. Her course, as a matter of fact,

(Testimony of Lebbeus Curtis.)

would be a series of tangents to some course, would it not?

A. Yes, it would be an ever-lessening circle.

Q. At the beginning the course would not be a circle; her bow would not describe the arc of a circle, when she first began?

A. Immediately she began to respond to her helm she would begin to swing.

Q. She would move in a—

A. (Intg.) Spiral.

Q. In a spiral, would she not? A. Yes.

Q. And she would only attain a circle after she had got well going under her helm, would she not?

A. Yes; I understood you to say with her engines backing.

Q. With the engines backing?

A. She never would attain to a circle.

Q. But if she was going ahead and simply put her helm hard aport she would not attain to a circle then until after she had gotten well going under her helm, would she? A. No.

Q. Now, then, on the line Mr. Campbell has had you draw from [215—187] position 2 to position 3, if the “Argyle” would change a little to port, if the “Argyle” had changed her bow a little to port as she moved to the position somewhere to the eastward of that line, the “Gualala” could always see the red light, couldn’t she?

A. I don’t think I follow you.

Q. The line from position 3 to position 2, Mr. Campbell asked you if you ever could see the green

(Testimony of Lebbeus Curtis.)

light of the "Argyle" while she moved to the eastward of that line.

Mr. CAMPBELL.—That was not my question.

Mr. WALL.—Q. Captain, as a matter of fact, if the "Argyle" changed her course, her bow a little to port, as she moved somewhere in the direction of the "Gualala" and to the east of this line, the red light could always be seen about on the same bearing; the red light of the "Argyle" could always be seen about on the same bearing from the "Gualala," could it not? A. I do not quite follow you.

Q. If the "Argyle" moved forward in the general direction of the "Gualala" and simply changed a little bit to port, her bow a little bit to port, as she went along, then the "Gualala" could see the red light of the "Argyle" about on the same bearing all the time, could she not, although the "Gualala" might be turning her bow to starboard?

A. That would be possible.

The COURT.—That is to say if they turned to the same extent each time?

Mr. WALL.—That is what I mean.

Q. Now, the same is true as to this other line that Mr. Redman had you draw, is it not, if the "Argyle" changed her bow and made over to port, then the red light of the "Argyle" would continue to be seen by the "Gualala"?

A. Yes, providing [216—188] the two vessels moved together and did not change their bearings.

Q. Exactly; and the same would be true of this other line that Mr. Lillick had you draw, would it

(Testimony of Lebbeus Curtis.)

not? A. Yes.

Mr. CAMPBELL.—Q. Captain, if the “Argyle” was coming down on a course you have last drawn this way, and the “Gualala” was proceeding on the course indicated from position 1, and the “Gualala” ported her helm coming this way, and the “Argyle” ported her helm coming this way, you could have a collision, couldn’t you? A. Yes.

Q. Then they would be green to green, would they not, when they were approaching each other?

A. Taking the “Argyle” in which position, Mr. Campbell?

Q. The position you have got the “Argyle” coming down on this course? A. Yes.

Q. She is showing her green light to this vessel?

A. Yes.

Q. She is seeing this vessel’s green light?

A. Yes.

Q. The “Gualala” ports her helm and comes this way, doesn’t she? A. Yes.

Q. She could port her helm and come this way to starboard, couldn’t she? A. Yes.

Q. If the “Gualala” was proceeding on this course and she put her helm to starboard, you could produce the collision, couldn’t you? A. Yes.

Mr. WALL.—Q. That is after the “Argyle” got far enough over to port, isn’t that correct, under a starboard helm? A. Yes.

Q. If the “Gualala” was swinging to starboard under a port helm and the “Argyle” was swinging to port under a starboard helm, and they were both

(Testimony of Lebbeus Curtis.)

moving about the same rate of speed, the "Argyle" would see the light of the "Gualala" practically about on the same bearing all the time, would she not?

A. Yes, she must see the "Gualala's" red light.
[217—189]

Mr. LILLICK.—He must see the "Gualala's" red light. Then you were mistaken a moment ago in answer to Mr. Campbell's question that they would be green to green?

A. Yes, I was going to correct myself, but Mr. Campbell did not give me time.

Q. Then your answer to that question was not correct; it would not have been green to green?

Mr. CAMPBELL.—Q. That is after the "Gualala" swings?

A. The "Gualala" in the original position is showing the red light to the "Argyle" providing the "Argyle" is there.

Q. My question assumes that she is showing her green light to the "Argyle."

A. I did not understand that. I thought you were assuming that the "Gualala" was on the southeast course.

Q. Assuming that the "Gualala" is coming along where she is showing her green light to the "Argyle" and the "Argyle" is showing her green light to the "Gualala"? A. Yes.

Q. And they come along, one vessel ports and the other ports, both vessels port their helms, you will produce this collision, will you not? A. Yes.

(Testimony of Lebbeus Curtis.)

Q. That is to say, if those two vessels were coming and approaching each other and they were showing green to green and each vessel ported her helm at the right time, you would produce this collision, would you not? A. Yes.

Mr. REDMAN.—Q. But in that event the “Gualala” would not have been in the position she is shown upon this map at all, but in a position somewhat similar to the one I marked on the map or chart and called “X,” necessarily to show a green light. That is the only way she could show her green light to the “Argyle.”

Mr. WALL.—Q. That is correct, is it, Captain?

A. Yes. [218—190]

Q. In order to produce the collision as Mr. Campbell states, the “Gualala” proceeding green to green and the “Argyle” proceeding green to green it would be necessary for the “Gualala” while following an absolutely safe course to port its helm and run directly across the bow of the “Argyle,” would it not, into a position of danger?

A. I would not say as to an absolutely safe course.

Q. But proceeding green to green she would have to while proceeding green to green port her helm and run across the bow of the “Argyle,” would she not? A. Yes.

Mr. CAMPBELL.—I want to call your attention to the fact that this line setting forth the course of the 1½ point line is drawn upon the basis of the testimony of your mate for the purpose of showing the evolutions through which it is claimed his vessel

(Testimony of Lebbeus Curtis.)

went, and the evolutions through which the "Argyle" would have to go to produce the collision; it necessarily follows, if the testimony is correct, that these vessels were approaching green to green, they could not have approached on the lines your mate testified to.

Mr. REDMAN.—There is no doubt about that.

Mr. WALL.—It would be strange if they got testimony in a collision where they all agreed on the facts.

Mr. CAMPBELL.—Q. Captain Curtis, in the chart which has been offered in evidence, you say that is based upon Mr. McAlpine's testimony?

A. Yes.

Q. Didn't McAlpine testify that the "Gualala" appeared 1½ points on the "Argyle's" starboard bow? A. Yes.

Q. Will you show me where that is on this chart?

A. Yes, this point, A.

Q. If you should take and extend the line from the point C on the starboard bow of the "Gualala" shown at point C, so as to locate [219—191] the "Argyle" 1 point, you would have the "Argyle" away down below the position marked A, would you not?

A. This is the "Argyle," Mr. Campbell, and the actual position is determined from the point 1½ on the "Argyle's" bow.

Q. On what course?

A. With the "Argyle" heading northwest half west.

(Testimony of Lebbeus Curtis.)

Q. Now, then, Captain, if the "Argyle" was as you have drawn it here at the position A, and the "Gualala" was at position C, then these vessels were approaching each other green to green, were they not? A. Yes.

Q. Green to green?

A. Yes, but you have a fine distinction; the "Argyle" was showing all three lights.

Q. She would show her green light, would she not?

A. Yes.

Q. It would not show the moment she crossed the course indicated by the black line with all of the figures below it—she would only see her green light, would she not, the "Argyle" would only see the "Gualala's" green light the moment the course of the "Gualala" got passed the stern of the "Argyle"—the "Argyle" would only see the "Gualala's" green light, would she not?

A. Yes, the "Gualala" turning on a southeast course.

Q. Then you draw those two vessels approaching each other green to green as they progressed, don't you? A. Yes.

Q. And you have the "Gualala" porting her helm, don't you? A. Yes.

Q. And at some stage of the proceedings you have the "Argyle" port her helm, don't you? A. Yes.

Q. And you produce a collision, don't you?

A. Yes.

Q. And your theory of the collision is that these two vessels were approaching green to green, and

(Testimony of Lebbeus Curtis.)

that the "Gualala" ported her helm and at the *same* the "Argyle" ported her helm and the collision was produced? [220—192]

Mr. REDMAN.—The witness has no theory. He has drawn on the assumption that Mr. McAlpine's testimony is true, that chart. It is not his theory of the collision.

Mr. CAMPBELL.—Q. Isn't that the result you produce?

Mr. REDMAN.—It is based upon Mr. Alpine's testimony.

Mr. LILLICK.—Further, it is assuming that Captain Curtis said that the green light only of the "Gualala" was apparent from the "Argyle" when, as a matter of fact, the captain stated just a moment ago that all three lights would be showing upon the "Argyle," red, and green and masthead.

Mr. CAMPBELL.—He testified while she was crossing the course that would be true, but the moment you have the "Gualala's" course behind the stern of the "Argyle" the "Argyle" could only see the green light of the "Gualala."

Mr. LILLICK.—But there was no point in the testimony where the "Gualala" went off to port, but, on the contrary, kept to starboard, so that instead of the green light being shown, the green light was shut out and the red light kept in sight.

Mr. CAMPBELL.—Q. Captain, what you have produced here is a collision where two vessels are approaching each other green to green, each ported, and the collision resulted?

(Testimony of Lebbeus Curtis.)

A. No, I do not consider that green to green in that case—yes, I do.

Q. You agree with me, don't you? A. Yes.

Mr. WALL.—Q. Each vessel ports at some stage in order to produce the collision, that is your testimony, isn't it? A. Yes.

Q. But prior to that it is also your theory the "Argyle" at some stage of the collision starboarded too, isn't it?

A. Well, when Mr. Campbell said that each vessel ports at some stage of the proceedings [221—193]—is that what you stated—I was referring to the "Argyle" porting here.

Q. Just prior to the actual collision? A. Yes.

Q. But prior to that time you have the "Argyle" swinging her bow to port under a starboard helm?

A. Yes, that is right.

Q. Mr. Campbell also asked you in regard to seeing the "Gualala's" light when the "Argyle" was in the position A, and the "Gualala" was at a position 1. Now, does that position represent the "Gualala" on a southeast course?

Mr. CAMPBELL.—You are taking another position; here is where they started; you go up here half a mile.

Mr. WALL.—Q. Take the position of the "Gualala" at the point marked C instead of 1?

A. Yes.

Q. In those two positions what would be the fact as to seeing the lights of a lumber schooner laden with lumber from the "Argyle"—what lights would

(Testimony of Lebbeus Curtis.)

be likely to be seen in that position,—taking a lumber schooner steering as laden lumber schooners usually steer?

A. She would show all three lights.

Q. And when vessels are so nearly end-on, what would be the fact as to a man standing on the port side of the bridge of the “Argyle” as to the bearing of the vessel ahead of him, on so small a bearing as that, could he distinguish actually whether that vessel was on the starboard side or the port side, if he stood on the port side of his bridge?

A. A point and a half bearing?

Q. No, say it was less than a point and a half.

Mr. CAMPBELL.—Take a point and a half bearing.

Mr. WALL.—Q. If it was a point and a half or if it was less than a point and a half, would he be able to determine which bow it was on if he stood on the portside of his vessel?

A. How much less? [222—194]

Q. Say it was a point?

A. I should think he would.

Q. If it was $\frac{3}{4}$ of a point what would be the fact?

A. It would be more difficult to determine.

Q. What would be the fact if it was $\frac{1}{2}$ point?

A. Half a point; it would be more difficult to determine.

Q. If he stood on the port side of his bridge and it was only half a point, the light might appear to be on his port bow, might it not?

A. More nearly ahead.

Q. More nearly ahead? A. Yes.

Mr. CAMPBELL.—I will offer the chart in evidence and ask to have it marked Exhibit “F.”

[Endorsed]: Filed May 8, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [223—195]

*In the District Court of the United States, in and for
the Northern District of California.*

No. 15,327.

The “GUALALA” STEAMSHIP COMPANY.

Libellant,

vs.

The Steamship “ARGYLL,” her Engines, Boilers,
etc.,

Respondent.

THE UNION STEAMSHIP COMPANY,

Claimant.

**Depositions Taken Before a United States
Commissioner.**

BE IT REMEMBERED that on Saturday, November 30th, 1912, pursuant to stipulation of counsel hereunto annexed, at the offices of Messrs. Page, McCutcheon, Knight & Olney, in the Merchants Exchange Building, in the City and County of San Francisco, State of California, personally appeared before me Francis Krull, a United States Commissioner for the Northern District of California, to take acknowledgments of bail and affidavits, etc.,

Harry Deloss Gibbs, a witness produced on behalf of the libelant.

Ira S. Lillick, Esq., appeared as proctor for the libelant and A. W. Beadle Co., Ira A. Campbell, Esq., of the firm of Messrs. Page, McCutcheon, Knight & Olney, appeared as proctor for the claimant, and F. R. Wall, Esq., appeared as proctor for Konstant Latz, and the said witness, having been [224—1] by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth.

[Stipulation Re Taking of Depositions.]

(It is hereby stipulated and agreed by and between the proctors for the respective parties, that the deposition of Harry Deloss Gibbs may be taken *de bene esse* on behalf of the libelant, at the offices of Messrs. Page, McCutcheon, Knight & Olney, in the Merchants Exchange Building, in the City and County of San Francisco, State of California, on Saturday, November 30, 1912, before Francis Krull, a United States Commissioner for the Northern District of California, and in shorthand by Edward W. Lehner.

It is further stipulated that the deposition, when written out, may be read in evidence by either party on the trial of the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of taking said deposition, and that all objections as

(Deposition of Harry Deloss Gibbs.)

to materiality and competency of the testimony are reserved to all parties.

(It is further stipulated that the reading over of the testimony to the witness and the signing thereof is hereby expressly waived.) [225—2]

[Deposition of Harry Deloss Gibbs, for Libelant.]

HARRY DELOSS GIBBS called for the libelant, sworn.

Mr. LILLICK.—Q. What is your name, age and occupation, Mr. Gibbs?

A. My name is Harry Deloss Gibbs; I am 34 years old; I guess I am 34—I was born in 1878, July 5th; that is close enough to it. Occupation, seaman.

Q. How long have you been going to sea?

A. I started in to go to sea in 1896.

Q. What papers, if any, do you hold?

A. I will give you this paper and you can get it. Second mate of any ocean, chief mate coastwise.

Q. In what capacities have you served since you first started going to sea?

A. I have served as sailor, as second mate, third mate on square-rigged vessels; first mate on sailing schooners; second mate on steam schooners; and first mate.

Q. Has your experience been all on this coast?

A. It has been on the Pacific Ocean.

Q. In what capacity were you on the "Gualala" at the time of the collision between her and the "Argyll"? A. I was second mate.

Q. That was October 15, was it, that the collision took place? A. Yes, on October 15.

Q. How big is the "Gualala"?

(Deposition of Harry Deloss Gibbs.)

A. She is about 130 feet long.

Q. And her breadth of beam?

A. Well, I don't know exactly her breadth of beam; I think it is about 26 feet—about 24 feet.

Mr. LILLICK.—Have you those dimensions?

Mr. CAMPBELL.—She is 123 feet by 30.3 by 91½ feet [226—3] deep; that is her official measurement; that is between perpendiculars.

Mr. LILLICK.—And her construction is entirely of wood?

Mr. CAMPBELL.—Yes.

Mr. LILLICK.—Q. Mr. Gibbs, what time did you go on watch the evening of the collision?

A. I came on watch at,—well, I was on watch from—we left there 5 o'clock; I was on from 5 to 6, on watch.

Q. Left where?

A. We left Union Landing; I was on watch from 5 to 6, and then I went below, and then I came on watch at 12 o'clock midnight.

Q. Did you remain on watch from then until the time of the collision?

A. Until the time of the collision.

Q. What was the condition of the weather when you came on watch at 12 o'clock?

A. The weather was foggy when I came on.

Q. How long did it remain foggy?

A. It remained foggy about an hour and thirty minutes.

Q. And then how was it from then up to the time of the collision?

(Deposition of Harry Deloss Gibbs.)

A. Then it cleared up till 2 o'clock and then it shut down foggy again for about 40 minutes and then it cleared again; the weather was hazy, it was not clear, perfectly clear, but it was hazy.

Q. How was that haze with reference to its obscuring your vision of light on the horizon?

A. The haze was low on the water but in the sky you could see our mast headlight plain, because when the fog is flying in the air it reflects the light so that you can see it.

Q. What was the condition of the water?

A. The water was smooth.

Q. The wind?

A. There was not any wind to speak of; [227—4] there was a light breeze, it was just a light breeze, blowing no general direction.

Q. Was there anyone on the bridge with you from the time the weather cleared up at 20 minutes to 3, as I understand your testimony, until the collision?

A. Yes, the captain came on the bridge; it was clear then.

Q. When did the captain come on the bridge?

A. Well, he came up between 1:30 and 2 o'clock.

Q. You did not understand my question. From 20 minutes to 3 when the weather finally cleared up up to the time of the collision was anyone on the bridge with you?

A. No, there was no one on the bridge with me then.

Q. Is the wheel-house on the "Gualala" closed in or is there a wheel-house at all?

(Deposition of Harry Deloss Gibbs.)

A. There is a wheel-house, it is in the pilot house, but the bridge itself is an open bridge.

Q. Are the bridge and the wheel on one platform?

A. No; the bridge is about $6\frac{1}{2}$ feet from the wheel, over where a man stands at the wheel.

Q. And the wheel man is how far away from you when you are on the bridge in your usual situation?

A. He is about 6 or 7 feet from you, that is about it.

Q. What speed were you going just prior to the collision?

A. Well, we were going about 8 miles an hour, $7\frac{3}{4}$ or 8.

Q. 8 miles or knots? A. Knots.

Q. What course were you steering?

A. Southeast.

Q. What was the last point of your departure, Mr. Gibbs? A. Well, the last point was Point Arena.

Q. Do you know about how far off the point you were when you passed?

A. Well, I don't know the exact distance, the mate [228—5] said it was foggy when we passed there, but I should judge we was about 4 miles off, 3 or 4 miles.

Q. What was the first that you saw of the "Argyll"?

A. I saw her range light when I first saw her.

Q. About how far away was it when you saw it then?

A. It was about a mile and three-quarters, or a mile and a half.

(Deposition of Harry Deloss Gibbs.)

Q. Do you know approximately how long that was before the collision when you first saw her range light?

A. No, I did not look at any time, I don't know exactly how long; I think it would be about, as near as I can judge, about 4 minutes.

Q. What bearing were those lights from you?

A. Well, those range lights that I saw were nearly in range.

Q. And upon which side of your bow were they?

A. They were on my port side.

Q. About what distance in points on the bow itself, if you know?

A. About a point and a half on the port bow.

Q. What lights, if any, did you see next on the "Argyll"?

A. About 3 minutes before the collision I saw her port side light.

Q. Were you watching her in the meantime?

A. Yes, I had been watching these range lights to see if she had changed her course.

Q. Did she change her course any?

A. She did not change her course up till that time.

Q. Then what occurred?

A. Then I blowed her one blast of the whistle, which she answered immediately.

Q. What did you do as to giving orders to your man at the wheel?

A. I told my man at the wheel to put his helm to port; the vessel payed off about $1\frac{1}{2}$ points. [229

(Deposition of Harry Deloss Gibbs.)

Q. What difference, if any, occurred, as to the lights of the "Argyll"?

A. Well, I seen the "Argyll's" range light changing, but I did not see any other side lights except the red light, and I told the man at the wheel to put his helm hard aport.

Q. In which direction did these range lights change, if you know, as to whether or not the "Argyll" was going upon one course or another?

A. Well, it did not look to me as though she had changed her course, but it appeared that she was not porting her helm at that time; it looked to me as if she had not ported her helm; it looked to me as though she was coming to starboard.

Q. How long after that was it before you saw her side lights?

A. Then the next thing I saw was her green side light.

Q. Was that after you had seen her red light?

A. Yes, that was after, yes.

Q. How long after?

A. Well, it was about a minute and a half.

Q. Going back to where you were watching her range lights, Mr. Gibbs, I do not understand the testimony showing that you saw a red light before having seen her green light. Which of her side lights did you see first, after having seen her range lights? A. I seen her red side light first.

Q. How long was it after you saw her red light that you saw her green light?

A. It was about a minute and a half afterwards.

(Deposition of Harry Deloss Gibbs.)

Q. On what course were you steering then?

A. We were steering about south southeast then—no, no. The helm was hard aport then, and I had not seen this green side light at that time. [230—7]

Q. Mr. Gibbs, go back to the time when you saw her range lights first, and in your own way tell consecutively what courses you were steering when you first saw his range lights, then when one light after the other, if they did, came up, and what you did about changing your course. Commence with the course that you were steering when you saw the range lights.

A. Well, the first thing I saw was her range lights.

Q. What course were you steering then?

A. We were steering south southeast, or southeast.

Mr. CAMPBELL.—Q. Magnetic?

A. No, that is the compass course.

Mr. LILLICK.—Q. What deviation is that?

A. One degree westerly.

Q. You saw her range lights; then what?

A. I saw her range lights and I saw her port side light; I blew one blast of the whistle, and told the man to put his helm to port; we was heading south southeast then. I seen these range lights changing and I told him to put his helm hard aport, and then I saw the green sidelights; then I stopped and back full speed astern.

Q. When you stopped and backed full speed astern upon what course were you steering, if you know?

(Deposition of Harry Deloss Gibbs.)

A. Well, we was heading south southwest at that time.

Q. South southwest? A. South southwest, yes.

Q. What whistles, if any, did you hear upon the "Argyll"—did he answer your one whistle?

A. He answered the one whistle, but he didn't blow any more whistles; there was no more whistles blown.

Q. Did you hear any signals from the "Argyll" with reference [231—8] to his stopping and backing?

A. No, I don't think he ever stopped and backed. I think he was going full speed all the time.

Q. From the lights upon the "Argyll" in your position what, if any, change did the "Argyll" make in her course from the time you first saw the range lights until the collision?

A. Well, the way it looked to me, the "Argyll" put her helm hard astarboard.

Q. When?

A. Well, when she answered this one whistle.

Q. Then what change did she make in her course after that, if she made any?

A. Then she put her helm hard aport; and the way I think that happened was this, that the third mate answered that—

Mr. CAMPBELL.—(Intg.) I object to the conclusions of the witness. Let him state what he knows.

Mr. LILLICK.—Q. You can state, Mr. Gibbs, what you saw her do and from those lights what she did do.

(Deposition of Harry Deloss Gibbs.)

A. Well, it appeared to me that when I blew that one whistle she was swinging to starboard.

Q. Could you tell whether she had commenced to swing to starboard before you blew that one whistle?

A. No, I think she was on her course at that time.

Q. When did she commence to swing to starboard, if she did?

A. Shortly after I blew that one blast of the whistle I noticed her range light begin to change, and that is why I ordered the man to put his helm hard aport.

Q. Then when did the "Argyll" change her course, if you judge she did, after that again?

A. Just about the time I stopped and backed, I think she changed her course. [232—9]

Q. When was that with reference to the time the green light showed to you?

A. That was just about the time that I saw her green light.

Q. How far do you think the two vessels were apart when you saw that green light the first time?

A. I should judge they were about a quarter of a mile.

Q. During any portion of the time when you first saw her range lights up to the time of the impact of the two vessels, did the "Argyll" ever get over on your starboard bow?

A. No, the "Argyll" could never get on our starboard bow because I was going on a port helm.

Q. When the impact of the two vessels occurred, where were you standing?

A. I was standing on the bridge.

(Deposition of Harry Deloss Gibbs.)

Q. Had the lookout reported the lights to you, Mr. Gibbs, at the time you saw these range lights?

A. Yes. Yes, he hollered there is a light ahead, a light on the port bow.

Q. Did he make any other reports to you as time went on from that time up to the time of the collision?

A. No, I never heard him say anything more.

Q. Could you see the "Argyll" as plain from your position on the bridge as he could from where he was stationed?

A. I could see her a whole lot better.

Q. When you gave the orders to the man at the wheel first to port his helm and then put it hard aport, do you know whether or not he obeyed your orders?

A. Yes, I know he did because I looked to see that he did.

Q. Do you know whether the "Gualala" had lost her headway by the time of the impact of the two vessels after you had given the order to full speed astern?

A. No, she had not.

Q. From your position on the bridge could you see whether or [233—10] not the "Argyll" was coming ahead?

A. Yes, I could see that she was coming right along.

Q. What, if anything, do you know about the speed at which she was coming just before the impact?

A. Well, it appeared to me that she never stopped.

Q. Did you notice the water about her bow or any-

(Deposition of Harry Deloss Gibbs.)

thing—did you notice as to whether or not she was in motion?

A. No, I did not notice the water, but I could tell by the speed that she was coming that she had not stopped.

Q. Where did she strike the “Gualala”?

A. She struck her about 25 feet from the bow, 25 feet from the stem on the port side.

Q. What were the relative positions of the vessels with reference to the way they met?

A. They met nearly head-on.

Q. Mr. Gibbs, will you with a pencil mark the positions of the “Argyll” and the “Gualala” when you first saw the range lights, if you can, and mark the positions with the names of the two vessels, and mark below that, “first position”? A. Yes.

Q. Will you now draw as best you can the relative positions of the “Gualala” and the “Argyll” after you had changed your course the first time by ordering the man at the wheel to put his wheel to port? Write upon it, “Second position.” A. Yes.

Q. Now, draw the relative courses of the vessels as you remember it after you had changed the course of the “Gualala” to hard aport, and mark it, “third position.” A. Yes.

Q. Do you intend that the distance, Mr. Gibbs, between the “Gualala” and the “Argyll,” as you have it on the chart there marked in the third position, has any bearing at all upon the distance the two vessels were apart? [234—11]

A. Well, I don't know; you would have to measure

(Deposition of Harry Deloss Gibbs.)

this if you wanted to get the distance.

Q. Then you don't intend that to be a drawing to scale? A. No.

Q. But only as to the relative courses of the two vessels? A. Yes, that is all.

Q. What do you mean by, "Yes, that is all"—as to the relative courses of the vessels?

A. When I put the helm hard aport, I seen the vessel in about that position, but the next thing I saw of the "Argyll" she was lying in about this position (illustrating).

Q. Mark it and mark it "fourth position."

A. Yes.

Q. Now, after that, Mr. Gibbs, if the "Argyll" again changed her course, put upon the chart the situation as you do remember it of the "Argyll," and mark that "fifth position." A. Yes.

Q. Now, one other position, the next one in sequence, how the two vessels came together; mark that "sixth position." A. Yes.

Q. Now, Mr. Gibbs, with reference to the chart that you have drawn, you have not shown the "Gualala" in the fourth and fifth positions in which you have placed the "Argyll"; what would have been the relative position of the "Gualala" with reference to the course as she appears to be steering on the third position?

A. Well, she was swinging to port all the time.

Q. Then the only difference would be that the "Gualala" would be swinging around, did you say, to port?

(Deposition of Harry Deloss Gibbs.)

A. The "Gualala" was swinging to port, always was swinging to port—on a port helm swinging to starboard.

Q. What, if any, effect did the backing of the "Gualala" have [235—12] upon the course of the "Gualala" from the time you commenced to back? Would it swing her bow to port or to starboard?

A. It would swing her bow to starboard, she would be swinging to starboard. She is swinging to starboard now, that is why I changed the position of the two vessels (illustrating).

Q. You have the "Gualala" marked in the third position steering upon a course more to starboard than you have her when she is in the sixth position. What, if any, explanation is there of the position that you have placed the "Gualala" in, marked "sixth position," if she was swinging on a port helm and going to starboard all the time?

A. Well, when you stop and back a vessel with the helm hard aport she swings to starboard and swings back; her bow swings back to starboard; of course, I don't say that this is exactly right, but if a person is going to work this thing out, they would have to figure it out.

Mr. CAMPBELL.—Q. That is your best recollection?

A. It is the way it looked to me; that is all there is. I do not say that is exactly correct, but to the best of my ability or knowledge, I think it is the best I could do.

Mr. LILLICK.—Q. Do you understand when a

(Deposition of Harry Deloss Gibbs.)

vessel is on a hard aport helm that she will swing to starboard after she has lost her headway and commences to back?

Mr. CAMPBELL.—We object to that question because it assumes a fact contrary to the evidence, and for the further reason that it is leading; the witness has already explained himself plainly upon the subject and has made drawings indicating the relative movements of the vessels.

Mr. LILLICK.—I will withdraw that question.

Q. Mr. Gibbs, you have marked the “Gualala” on the chart in [236—13] the third position and then in the sixth position have made her change her course more to port than it was before; she is shown to have changed her course more to port. Will you explain that?

A. You asked me to explain this position, when these vessels run together; that is the way they ran together. I did not put that for any position on the chart, that is the way the vessels really ran together (illustrating).

Q. That shows their position at the time of the impact?

A. At the time of the collision, yes. That is all I put that there for.

Q. Mr. Gibbs, the “Gualala” in the third position is upon a course which in the sixth position you have changed. I want to understand exactly whether or not you by drawing those two diagrams intend to show that the “Gualala” changed her course more to port than to starboard during the time that elapsed

(Deposition of Harry Deloss Gibbs.)

between when she was in the third position and in the sixth. Do you understand the question?

Mr. CAMPBELL.—I object to the question; in the first place, because it is leading; in the second place, because it is an attempt on the part of counsel to change the explanation which the witness has made in reducing the various positions of the vessels to the chart.

Mr. LILLICK.—Answer the question. Read the question, Mr. Reporter.

(The last question repeated by the Reporter.)

A. You asked me this question, to show how they came together, the position then; that is the position they came together as far as I can judge. That has got nothing to do with the other positions of the vessels, as far as I put it down on the chart. [237—14]

Q. Did the "Gualala" or did she not change her course any to port after she had been running on that order that you gave to the man at the wheel to put her hard aport, from that moment up to the time of the collision?

A. Well, she changed to about $4\frac{1}{2}$ points after that.

Q. Which way?

A. To port. When I first gave him the order to put his helm to port I looked down at the compass; then she was heading about south southeast.

Q. I do not think the witness understood my question. Will you read it to him again?

(The last question repeated by the Reporter.)

A. I did not notice the compass any more then.

(Deposition of Harry Deloss Gibbs.)

Q. Do you know, Mr. Gibbs, whether she went to port at all after she had been running on that port helm?

A. Well, I looked at the compass—I knew she was going to port.

Q. What do you mean by going to port?

A. I mean the vessel had a port helm and she was swinging to port.

Q. She was going to starboard, you mean, or to port?

A. Well, I will tell you, when you tell them to put the helm to port, order the helm to be put to port, she is on a port helm.

Mr. CAMPBELL.—Q. Her bow actually moved to starboard?

A. The bow moved to starboard. That has nothing to do with handling the vessel.

Mr. LILLICK.—Q. Mr. Gibbs, do you know where the log of the “Gualala” is?

A. The log-book or log?

Q. The log-book?

A. The log-book, I guess, is in the bottom of the ocean, or floating around somewhere.

Q. Have you ever seen it since the collision?

A. No.

Q. What cargoes did you have on at the time of the collision, [238—15] just in a general way?

A. Well, we had about 3,000 railroad ties, and about 130 cords of bark, 125 cords of bark.

Q. What happened to the “Gualala” after the collision in a general way?

(Deposition of Harry Deloss Gibbs.)

A. Well, when the "Argyll" struck us she listed heavily to starboard and she filled with water right away.

Q. What happened to the deck cargo?

A. Well, the deck cargo all went over to starboard and then when the water ran into the hold she straightened up a little, but when she first struck us I was going to go down to get a hold of the whistle and blow a distress signal, but I could not get down there because she was listed that bad.

Q. Why do you say when she first struck you? Did she strike you more than once?

A. Well, she kept ripping into us; she struck us more than once; she kept tearing into us right along.

Q. Do you know whether your lights were burning at the time of the collision?

A. Yes, I know they were all burning.

Q. How do you know?

A. Because I saw them. When we lowered the boats and pulled around the vessel I saw they were all burning at that time; the lights on the "Gualala," that is the side lights, there is a little hole bored through the screen part, and standing on the bridge, if you walk to either side you can look through the screen port and always see the side lights. The mast-head light, you can see the reflection on the forestay; if there is a mist or fog there you can see the reflection on the mast.

Mr. CAMPBELL.—We do not deny that the lights were burning.

(Deposition of Harry Deloss Gibbs.)

Mr. LILLICK.—Q. What crew did you have on board?

A. We had—what do you mean, the whole crew altogether?

Q. Yes.

A. We had 8 sailors, 8 firemen, 2 engineers, 2 mates, and 2 cooks. [239—16]

Mr. CAMPBELL.—We make no point on that either.

Mr. LILLICK.—We offer that chart in evidence and ask that it be marked Libelant's Exhibit "A."

(The chart drawn by the witness is marked Libelant's Exhibit "A.")

Cross-examination.

Mr. CAMPBELL.—Q. What time was it that you left Union Landing? A. 5 o'clock.

Q. Mr. Gibbs, would you just look at this chart which has been marked Claimant's Exhibit 1 for identification and tell me whether or not Union Landing is located at the point I have marked with an "X" and have written the words: "Union Landing"?

A. Well, I don't know exactly where Union Landing is, not exactly. If I had a chart that it was marked on I could tell it was there.

Q. Do you know where Hardy Creek is?

A. I know it is about somewhere there. You walk uptown here and look at a man's house, and if there was no number on it you would not know whether it was his number or not.

Q. Are you willing to admit on Mr. Linderman's

(Deposition of Harry Deloss Gibbs.)

statement that that is about where it is?

A. Yes, that is about the place I guess—it is about a mile from Hardy Creek; that is about the place.

Q. You left Union Landing at 5 o'clock in the afternoon? A. Yes.

Q. And you were on watch from 5 to 6?

A. Yes, I was on watch from 5 to 6.

Q. Where did you lay your course for?

A. At that time we were steering offshore.

Q. What course were you steering?

A. I don't know what course [240—17] we were steering.

Q. Weren't you on watch?

A. I was on watch, yes.

Q. Why can't you remember that course?

A. Well, you steer different courses; if it was clear and you could see the land, why you would steer one course, and if it was foggy you would steer another course.

Q. What was it at this time? A. It was foggy.

Q. What course were you steering when it was foggy?

A. Well, I had only been there once before.

Q. I am trying to get what course you were steering offshore?

A. I don't know; you better find that out from the Captain, he lays the courses, I don't.

Q. Didn't you see the compass to see whether the quartermaster was following the courses?

A. Yes, I seen the compass all right.

Q. You can't recall now that course?

(Deposition of Harry Deloss Gibbs.)

A. I don't recall that course.

Q. How long did you continue to run on that course which you were making offshore?

A. Well, I don't even remember that.

Q. Was the course changed while you were on watch?

A. That I could not tell you either, whether it was changed or not. I do not suppose it was, because the old man was down eating his supper, the captain was down eating his supper, and six o'clock I was relieved to go and get my supper.

Q. Can't you give us approximately what that course must have been?

A. Well, I could tell you some course which would take you clear of the land; I could not give you the course we were steering because I don't know.

Q. Did you steer directly away from the land?

A. Well, I could not explain that to you what the course was. We were [241—18] not steering east, that is sure.

Q. After you changed your course from the one that you were first making when you left Union Landing for what point did you then lay your course?

A. Why then we laid the course for Point Arena.

Q. Do you know what course you were steering at that time? A. No.

Q. Were you on watch prior to the time that you passed Point Arena?

A. I was on watch from 5 to 6.

Q. I mean following that watch were you on watch when you got down to Point Arena, so as to pass it?

(Deposition of Harry Deloss Gibbs.)

A. No. We was past Point Arena.

Q. What time of night did you pass Point Arena, do you know? A. I don't remember that.

Q. Do you know of your own personal knowledge how far you passed off Point Arena?

A. I did at that time, but I don't know now.

Q. How did you know at that time of your own knowledge?

A. Because the mate took a bearing of the point and told me we was off the light.

Q. Were you on deck then?

A. No, I was not on deck.

Q. He reported that to you afterwards?

A. When you come on the bridge to relieve a mate or relieve anyone they always tell you how far their departure is from the last place and what distance you pass off that.

Q. What did he give to you?

A. He gave me the distance but I have forgotten it, I don't know now.

Q. What course was the vessel on when you came on deck? A. Steering southeast. [242—19]

Q. Where was she with respect to Point Arena at the time you came on deck?

A. I can't tell you that even, because I have forgotten.

Q. What time had the mate told you that you passed Point Arena?

A. He told me the time but I have forgotten that.

Q. Are you able to locate upon that chart marked, "Claimant's Exhibit 1 for Identification" or on this

(Deposition of Harry Deloss Gibbs.)

chart which I will ask to have marked, "Claimant's Exhibit 2 for Identification," the course that was pursued by the "Gualala" from the time she passed Point Arena—are you able to indicate upon this chart, on "Claimant's Exhibit 2 for Identification," the course of the "Gualala" after she passed Point Arena?

A. Well, I will tell you, if I marked down a course on the chart you would say that is the course. I am not going to mark any course on that chart.

Q. Is that because you cannot?

A. It ain't because I cannot, but you will just simply say, he says he was there and that is all. If I were to mark that course off I would want to figure it out.

Q. You know what the course was, do you not?

A. I know how to mark the course all right.

Q. You know what the course was, do you not?

A. I know the course was southeast.

Q. To lay that course down upon the chart would it be necessary for you to know the distance from Point Arena at which the "Gualala" passed it?

A. Well, we know she did not run into the point, or know that she was somewhere off the point; where that somewhere was, I am not in a position to state exactly.

Q. You say that you can lay this course down upon the chart and yet you don't recall at the present time the distance which [243—20] the mate gave you at which the "Gualala" passed Point Arena?

(Deposition of Harry Deloss Gibbs.)

A. Well, I will tell you I might as well tell you as any other time—

Q. Go ahead. That is what I want.

A. The second mate does not run a vessel. There is a master on board that runs that vessel, and he lays all courses, and any time that a course is changed on that vessel the master knows about it. Now, the proper thing for you to do is to take and get the master to lay off this course for you; in so far as I am concerned I will lay no course off for anyone.

Q. Why is it that you refuse to lay down a course on this chart?

A. Because I was not the master of the "Gualala," I was the second mate on the "Gualala."

Q. But you can lay the course down?

A. I can, oh yes, but the master is the man to ask that question of.

Q. Do you now recall the distance that the mate gave you as the distance at which you passed off Point Arena?

A. I will tell you—I have forgotten.

Q. How could you lay this course down then which you refuse to lay down?

A. Well, I will just tell you one thing. I was up before a judge once. He told me that you don't know anything unless you are absolutely sure of it, and I am not absolutely sure of this, so I must not know. You can take his statement for that.

Q. Do you refuse now to lay this course down for me?

A. I don't refuse to lay the course down but—

Q. (Intg.) Will you lay it down for me then?

(Deposition of Harry Deloss Gibbs.)

A. No, the master is the man to lay that course off.

Q. You have stated that at the time you first saw the "Argyll's" range lights that you were pursuing a southeast [244—21] compass course?

A. A southeast compass course.

Q. And you have said that the deviation was one degree westerly? A. One degree westerly.

Q. How did you know that was the deviation?

A. Well, I don't know that it was but there is a deviation card laying in the pilot-house, and I picked this deviation card up and I seen a southeast course on it was a one degree westerly deviation.

Q. When was it you saw this?

A. I saw this some time before.

Q. Before what?

A. Well, some time before, I don't exactly recall the exact time that I seen it.

Q. Was it immediately before the collision?

A. No, it was not immediately before the collision, it was on some other trip.

Q. On some other trip? A. Yes.

Q. What is there about it that has fixed in your memory that on the southeast course you had a one degree westerly deviation?

A. Well, there is other trips you steer southeast and sometimes I used to lay off courses and that is how I know on that course that she had one degree westerly.

Q. Can you give me the deviation of other courses?

A. No, I can't give you the deviation of the other courses.

(Deposition of Harry Deloss Gibbs.)

Q. When you saw the range lights of the "Argyll" you say that they were about a point and a half on your port bow? A. Yes.

Q. Was there an opening between the range lights?

A. There was a little opening.

Q. Was it from that opening that you judged the "Argyll" was a point and a half on your port bow?

A. No; it was by looking across our bow that I judged she was a point and a half on the port bow.
[245—22]

Q. Which way was the course of the "Argyll" as indicated by the range lights with respect to your course; that is to say, was she diverging from your course or was she coming towards you?

A. Why, her range lights was nearly in line; it appeared to be she was coming nearly for us, or nearly in a direct line for us.

Q. Nearly in a direct line for you? A. Yes.

Q. That was the reason why you stated before the United States Steamboat Inspectors the day before yesterday that if the two vessels had continued on their courses without changing that you could not tell whether the "Gualala" would have struck the "Argyll" on the starboard bow or on the port bow, was it?

A. Well, I will tell you. I didn't know and don't know what the "Argyll" was steering.

Q. You remember making that statement?

A. I made that statement and I still stay with that statement, if the "Argyll" had stayed on her course and me not knowing what she was steering and I had

(Deposition of Harry Deloss Gibbs.)

stayed on our course we might have went together and we may have not.

Q. Your statement to the inspectors which you now reaffirm was you could not tell which bow you would have struck the "Argyll" on, it might have been on the port bow or on the starboard bow?

A. I don't know where we would have struck the "Argyll," I don't know what course the "Argyll" was steering.

Q. Didn't you state to one of the United States Steamboat Inspectors that if you had not changed your helm and the "Argyll" had not changed her helm that you would have struck the "Argyll" on her starboard bow? [246—23]

A. Well, I will tell you, at that time I told him that I did not know whether we would strike on the starboard or the port bow; and so he kept right on and asked me, "Don't you think you would have struck on the starboard?" and I said, "I don't know whether I would; I don't know what course she was steering." Then the question he asked me was, "Don't you know?"—he said, "Don't you know when a green light is to green you cannot strike a vessel on the starboard side? Don't you know when a red light is to a red light you cannot strike on the port side?" I said I knew that thing all right, but when two vessels are coming together, if you see a red light and you see another red light and you don't know their exact courses, and the helms are not changed, they may run together. And you can tell the United States Inspectors that. He could sit up

(Deposition of Harry Deloss Gibbs.)

and say they won't run together, but it all depends on what courses they are steering.

Q. Then your theory is there is always danger of collision involved in two vessels passing red to red?

A. There is no danger at all. They can't run together as long as you can see your red light, but you can see two red lights and two vessels be on different courses and they will finally change so that you will see them coming head to head.

Q. When you saw the "Argyll's" range lights, how far apart were the two vessels, in your judgment?

A. About a mile and a half.

Q. What speed were you making?

A. About 8 miles.

Q. Eight miles or eight knots? A. Eight knots.

Q. Had you maintained that speed from the time you left Union Landing?

A. Well, I don't know what speed we had been making. [247—24]

Q. Had it been maintained all the time that you were on watch?

A. Well, I was not down in the engine-room to look at the steam gauge. I don't know how much steam was there; you would have to ask the engineer for that part of it.

Q. You judged, then, from looking at the water that you were going about 8 knots?

A. I did not judge from looking at the water at all. I looked at the log.

Q. Had you noticed any reduction in the speed of

(Deposition of Harry Deloss Gibbs.)

the vessel at all while you were on watch after 12 o'clock?

A. I never was able to tell whether a vessel was slowing down her speed or not unless I could get it from the log or unless I was down in the engine-room and seen the steam drop.

Q. Could you tell by a change in the vibration of the vessel?

A. No, I am not as delicate nerved as that, I could not tell that.

Q. Your pilot-house was almost over the machinery, was it not? A. It was over the boiler.

Q. And the machinery is just aft the boiler?

A. The machinery is about 15 feet from the boiler, something like that.

Q. And yet you say you could not tell by any vibration on the bridge whether a change had been made in the speed of the vessel or not?

A. Well, I could tell if she was stopped altogether, or I could tell if she backed, but when she was still going ahead, if she went a mile or two faster or slower, I could not tell it.

Q. Couldn't you tell it by looking over the side at the water?

A. No, I couldn't tell the speed by looking at the water. That is, I could tell within a couple of miles.

Q. Had you noticed whether there had been a reduction even [248—25] of two miles in speed while you were on watch?

A. I don't know that there was any reduction whatever.

(Deposition of Harry Deloss Gibbs.)

Q. Did you order any change in the speed of the vessel up to the moment that you backed full speed astern?

A. Well, I stopped the vessel first. Of course, then I knew there was a difference.

Q. How long did she remain stopped?

A. Two or three seconds.

Q. Then what did you do?

A. I sent her full speed astern.

Q. Was any reduction in speed ordered by you from the time that you went on the bridge at 12 o'clock until you ordered the engine stopped?

A. No.

Q. Now, when you saw the range lights of the "Argyll" you ordered your quartermaster to put his helm to port? A. Yes.

Q. And he ported about $11\frac{1}{2}$ points?

A. Something like that, about $11\frac{1}{2}$ points.

Q. That is to say, her bow swung so that she moved to starboard about $11\frac{1}{2}$ points? A. Yes.

Q. What was the order that you gave to the quartermaster to change his course that way?

A. I told him to put his wheel to port.

Q. Did you ever order him to steady on his course after he had swung a point and a half first?

A. No, I did not order him to steady.

Q. Now, if he changed his helm so she would swing a point and a half and he had not steadied on his helm, she would continue to swing to starboard?

A. Yes, she would continue.

Q. In fact, that is what she did do?

(Deposition of Harry Deloss Gibbs.)

A. He done whatever I told him; yes. [249—26]

Q. How far apart do you think the vessels were at that time when you ordered your helm put over to port?

A. They were about, well, I should judge about 3 miles apart—no, no, not three miles. It was about a mile and a half that they were apart.

Q. How long was that before the collision?

A. About 3 minutes before the collision.

Q. Then what did you see next on the “Argyll”?

A. I saw the whole ship, I could see the whole ship.

Q. Could you see the whole ship before you could see the “Argyll’s” red light as you have testified?

A. No, I did not see the ship then.

Q. How soon after you ordered your helm to port and the quartermaster changed the course of the “Gualala” to port, did you see this alleged red light of the “Argyll”?

A. What does that word “alleged” mean?

Q. Well, it is the red light that you have stated that you saw. There is no trap in that at all.

A. No, we just want to find out about this word “alleged.”

Q. The red light that you say you saw from the “Argyll,” how soon after you had changed your helm to port and the quartermaster actually changed the vessel’s course to port, did you see the red light of the “Argyll” which you have testified to?

A. That was about a minute after I seen the range light.

Q. How soon was it after you had changed your

(Deposition of Harry Deloss Gibbs.)

course to starboard, I am asking you?

A. Well, I am telling you I seen that red light about a minute after I seen the range light.

Q. And immediately that you saw the range light you put your helm to port?

A. No, I didn't put my helm to port. [250—27]

Q. How soon was it after you saw the range light that you put your helm to port?

A. When I saw the range lights, I blowed one blast of the whistle, and then he answered, and then I put the helm to port.

Q. Haven't you already testified that you put your helm to port when you saw her range lights?

A. No, I did not testify any such thing.

Q. Did you shift your helm to port before you blew your one blast? A. No.

Q. How far distant was the "Gualala" from the "Argyll" at the time that you changed your helm to port? A. About a mile.

Q. The weather was clear at that time?

A. It was hazy.

Q. You had no difficulty in distinguishing her lights?

A. No, not then; I could see her lights plain.

Q. Her range lights above the haze were clear, were they?

A. There was haze flying on the range lights.

Q. How far distant was the "Argyll" when you saw the body of the ship?

A. Well, I guess it was about a quarter of a mile away, or a little more.

(Deposition of Harry Deloss Gibbs.)

Q. After you blew your one whistle you ported your helm, and she continued to swing on that port helm? A. Yes.

Q. You say the "Argyll" answered with one whistle? A. One whistle.

Q. What did you do next?

A. Well, I seen the "Argyll's" range lights changing.

Q. The range lights changing?

A. Yes, and I told my man to put his helm to hard aport.

Q. How were they changing? How could you tell the range lights were changing?

A. Well, they appeared to me they [251—28] were changing.

Q. And it was by those range lights that you were judging that she was swinging? A. Yes.

Q. Which way did you think she was swinging?

A. Well, I thought she was swinging to—I thought she was swinging a little to starboard.

Q. Then you at that time ordered your helm to hard aport?

A. I still seen that range light, and I ordered him to put his helm hard aport.

Q. From that time, from the swinging of the range lights you thought the "Argyll" was swinging to starboard?

A. I thought she was swinging a little to starboard; it appeared that way to me.

Q. How long before the collision was it that you put your helm hard aport?

(Deposition of Harry Deloss Gibbs.)

A. It was about a minute and a half.

Q. How long was that after you had first put your helm to port? A. It was about half a minute.

Q. Her bow was then swinging to starboard under her port helm with the engines working full speed ahead, going about 8 knots?

A. Yes, her engines were going full speed ahead.

Q. What was the next that you saw of the "Argyll"?

A. The next thing I saw was a green light.

Q. How soon was that after you put your helm hard aport? A. That was about 25 or 30 seconds.

Q. How far distant was the "Argyll" from you at that time? A. About a quarter of a mile.

Q. How did she bear from you?

A. She was on our port bow.

Q. How much?

A. She was about 2 points on our port bow.

Q. How soon after you saw the "Argyll's" green light did you reverse full speed astern?

A. Right away. [252—29]

Q. That was about 25 seconds before the collision, 25 or 30 seconds before the collision?

A. No, it was about a minute before the collision.

Q. You have just stated that you saw the green light about 25 or 30 seconds before the collision?

A. No, I did not.

Q. How did you come to reverse full speed astern a minute before the collision?

A. Well, I knew there was going to be a collision or I was nearly certain of it.

(Deposition of Harry Deloss Gibbs.)

Q. Did you have any standing orders on board your vessel directing you to call the master if there was any danger? A. Yes.

Q. Did you call him at this time? A. No.

Q. Why not?

A. Well, because I did not know where the speaking-tube was at that time and I had other things to do.

Q. Is that the real reason?

A. Well, the real reason that I had to run over there and jump up on top of the house and the bark was piled up alongside of the house, I could not holler down below like I used to.

Q. You say that you could not find the speaking-tube; as a matter of fact, you didn't know there was a speaking-tube there, did you? A. No.

Q. How long had you been on that vessel?

A. About 2½ months.

Q. During all of that time you had never discovered a speaking-tube from the bridge to the master's room? A. Yes.

Q. The reason that you say now there is a speaking-tube there is because somebody else has told you there was? A. Yes.

Q. Don't you think if there had been you would have found it?

A. Oh, it might have been there and I not know about it. [253—30]

Q. Didn't you know pretty well what there was on the bridge of that vessel?

A. Well, in these cubby holes, I knew what was there, but I did not notice the speaking-tube. But

(Deposition of Harry Deloss Gibbs.)

one reason is this, you know whenever you blowed a whistle or rang the bell the old man used to always come right up.

Q. Would he come up every time you blew a passing whistle?

A. Well, as a general rule, you don't blow passing whistles unless there is a vessel pretty close to you; in the daytime you very seldom, hardly any steamers blow passing signals in the daytime.

Q. Is that the way you navigate vessels?

A. Is that the way I navigate vessels?

Q. Yes, without blowing passing signals.

A. Out on the ocean they don't blow passing signals.

Q. That is, you don't blow them?

A. Nobody else blows them.

Q. Do you know what the law requires with respect to blowing passing signals?

A. I know what the United States Inspectors require, and I know what other nations require, too.

Q. What is it?

A. If two vessels are within half a mile of each other, why, they blow passing signals; otherwise they don't.

Q. But yet that law is not followed out on the ocean? A. No, that is not followed out.

Q. You don't make a practice of it yourself?

A. Well, if a vessel is a mile or so away from me I never blow any whistles; if she is within a half a mile or so I blow a whistle or two whistles, whatever the case may be.

(Deposition of Harry Deloss Gibbs.)

Q. Does the master always come on the bridge when you blow a whistle under those circumstances?

A. Well, he don't always come, but as a general rule he does. [254—31]

Q. It was not the habit of this master to do it, was it? A. Yes, it was his habit.

Q. So that is the real reason you did not call the master, is it? A. That is one of the reasons.

Q. Why didn't you state that reason to the United States Steamboat Inspectors last Wednesday as one of the reasons? A. Why didn't I?

Q. Yes.

A. I think I said everything under the sun to him; I didn't think that was left out.

Q. Didn't you state to the inspectors the reason you did not call the master was because in order to get down to the master's room you had to pass down a ladder from the bridge through the tan-bark?

A. Yes.

Q. And that tan-bark was so piled all around the cabin that it was impossible for you to get to the master's room, crawl over the top of the cabin to the master's room?

A. I did not say it was impossible; no, I did not say that. I said I could have went around that way.

Q. The tan-bark was piled up right alongside the cabin, was it not?

A. Alongside the house. I used to hang my head over there and holler down that way.

Q. Could you do it with the tan-bark there?

(Deposition of Harry Deloss Gibbs.)

A. I could not get through the tan-bark very well with my head.

Q. Her cabins are all on the after part of the vessel, are they not? A. Yes.

Q. She carried tan-bark stowed on deck alongside of the cabin? A. Yes, up to the top of the cabin.

Q. How much did it project above the top of the cabin? A. About 6 or 7 inches.

Q. And it was that tan-bark that prevented you from going [255—32] along the top of the cabin and leaning over and calling down to the captain?

A. Yes.

Q. What did she have on deck, what was her deck-load composed of? A. Ties and tan-bark.

Q. How many ties did she have on deck, do you know?

A. Well, I guess there was about 1100 or 1200.

Q. What part of the deck were they stowed on?

A. They were stowed some places on the deck, a good many of them were stowed aft, more of them aft than forward.

Q. How many did they have stowed forward?

A. I don't know, I didn't count them.

Q. Didn't you assist in loading the vessel?

A. Yes.

Q. Can't you give us an approximate idea of how many they had on the deck forward?

A. Well, they had some stowed all around the vessel; I don't know exactly the locality where every tie was stowed.

Q. Can you give us approximately the number that

(Deposition of Harry Deloss Gibbs.)

was stowed forward on the deck?

A. No, I can't answer that question; I don't know.

Q. How were thew stowed on deck, athwartship or fore and aft?

A. They stowed them both ways.

Q. Did they come above the rail of the vessel forward?

A. No, they did not come up above the rail forward.

Q. When you reversed full speed astern you had not at that time seen this green light?

A. Yes, that is what made me reverse.

Q. By seeing the green light? A. Yes.

Q. How long was that, did you say, before the collision? A. About a minute.

Q. About a minute? A. Yes. [256—33]

Q. How far distant did you say that you thought the "Argyll" was then?

A. About a quarter of a mile away.

Q. Your vessel continued to swing on this port helm all this time, did it not, going ahead at 8 knots up to the time you stopped her—she continued to veer off to starboard under this port helm up to the time you reversed? A. Yes.

Q. And at the time of the collision the "Gualala" had not stopped in the water, she still had headway?

A. She still had headway, yes.

Q. So that she was still under the influence of her hard aport helm, forging ahead, was she not?

A. Yes.

Q. Now, how fast, in your judgment, was the "Gualala" going through the water at the time of

(Deposition of Harry Deloss Gibbs.)

the actual impact? A. About a mile an hour.

Q. That is a knot an hour?

A. A knot an hour.

Q. You never, at any time, changed her helm after you saw the "Argyll" except that you first ordered it to port and then to hard aport? A. That is it.

Q. And at the time of the collision the helm was actually hard aport? A. Hard aport.

Q. What was the angle at which the two vessels came together? A. They struck nearly head-on.

Q. Nearly head-on? A. Yes.

Q. Did the "Argyll" rip into you and glance off?

A. Well, she struck us and kind of knocked us away and then kept a kind of ripping right along.

Q. Down your port side? A. The port side.

Q. Did you continue to keep her green light in view up to the moment of the collision?

A. I did not stop to watch that green light; after I seen it, why I reversed. [257—34]

Q. Do you know what the law requires when you reverse your engines, the law requires with respect to signals?

A. Yes, I know what the law requires.

Q. What is it?

A. I can go out here on the bay and reverse my engines and I don't have to do anything.

Q. Under the circumstances that night where you reversed your engines, what did the law require?

A. In this case the law required you to blow four blasts of the whistle.

Q. Four blasts?

(Deposition of Harry Deloss Gibbs.)

A. Four blasts and then you should blow three blasts.

Q. What would the three blasts indicate?

A. Going full speed astern.

Q. Did you blow the three blasts to indicate that you were going full speed astern?

A. No; the vessels were so close together there was no necessity of blowing the whistles there.

Q. About what course were you heading on after you had ported your helm a point and a half?

A. About what course?

Q. Yes, what course were you heading on then?

A. Southeast by south, a half south.

Q. How much do you think that you had swung to starboard when you started to reverse your engines?

A. Six points.

Q. Were you off the bridge at all during your watch? A. I was down to look at the log.

Q. Where did you have to go to look at the log?

A. I had to go down over the top of the house back on the poop.

Q. That is off the top of the cabin?

A. Off the top of the bridge, go down from the bridge down there.

Q. Was anybody left in charge of the bridge when you went to do that? A. No. [258—35]

Q. What did the lookout on the forecastle-head call out to you when he reported the "Argyll's" lights?

A. He sung out, "Lights on the port bow."

Q. Why did you state to the inspectors the other day that he said, "Lights ahead"?

(Deposition of Harry Deloss Gibbs.)

A. Lights ahead? Well,—

Q. (Intg.) Which was it, “Lights ahead,” or “Lights on the port bow,” or isn’t your recollection exactly clear about it?

A. Well, I am not exactly certain whether he said, “Lights right ahead” or “Lights on the port bow,” but I think he said, “Lights on the port bow.”

Q. The other day you thought he said, “Lights ahead”?

A. Well, I might have stated that, but then—

Q. (Intg.) What occasion, in your judgment, would there have been for the “Argyll” to have put her helm hard aport when you blew your first passing whistle? Why would the “Argyll” put her helm hard aport when you first blew your passing whistle?

A. Why would she have to?

Q. Yes.

A. I do not think she did put her helm hard aport.

Q. If she answered that she had complied with your one blast passing whistle she would have had to have ported her helm, wouldn’t she? A. Yes.

Q. And under those circumstances would she put her helm hard aport?

A. She did not need to put her helm to hard aport; if she was not swinging to starboard she would have been all right.

Q. Would it be natural for the navigating officer of the “Argyll,” approaching as your vessels were, as you say they were, upon receiving a one blast passing whistle from you to [259—36] put the “Argyll’s” helm hard aport?

(Deposition of Harry Deloss Gibbs.)

A. No, he would not need to put her off her course more than half a point.

Q. Why did you say then that you judged that the "Argyll" had put her helm hard to starboard? Would that be the natural thing to expect?

A. No, that was the unnatural thing to do. I did not say that she put her helm hard to starboard, I don't know how many degrees she put her helm over to starboard; but she was swinging to starboard; I could tell that by the change in her lights.

Q. Why did you say at the beginning of my examination that you could not tell by the range lights just how the "Argyll" was swinging? Now, you say that you could tell by the range lights that she was swinging to starboard?

A. When I first seen these range lights I could not tell in what direction the vessel was going.

Q. Would she be swinging when you first saw her?

A. She was on her course when I first saw her, and of course I could not tell how much she was swinging, because she was coming for us.

Q. You stated to me you could not tell by the range lights how she was swinging or how she was heading. The moment that you saw her range lights begin to change, did you back full speed astern?

A. No, I didn't.

Q. And yet at that time you thought she was coming towards you? A. Sure!

Q. You did not pay any particular attention to the speed of the "Argyll," did you?

(Deposition of Harry Deloss Gibbs.)

A. The "Argyll's" speed has got nothing to do with me.

Q. For that reason you didn't pay any particular attention to the speed of the "Argyll"? [260—37]

A. Yes, I could tell the speed of the "Argyll" all right when I seen her coming towards us.

Q. Do you think she had been backing at all?

A. I don't think the "Argyll" ever backed; I think she was coming ahead full speed all the time.

Q. Do you know whether she was loaded or not?

A. Yes.

Q. The reason that you think that the "Argyll" was not reducing her speed was because of the rapidity with which they came towards each other?

A. Yes.

Q. In this drawing that you have made that has been offered in evidence as Libelant's Exhibit "A," you have recorded the relative and respective positions of those two vessels according to your recollection, haven't you, as you remember them?

A. Yes. If you will look at them, I will explain them.

Q. I am asking you if that is not true, you have put down what you remember about it?

A. This position here shows the "Gualala" when I first saw the "Argyll," and this the second.

Q. I understand that, Mr. Gibbs, I do not care about going into the details of it again; I am simply asking you whether or not the drawing shows the relative and respective positions of the vessels as you recall them?

(Deposition of Harry Deloss Gibbs.)

A. Well, no, that drawing is not exactly the way I would do it if I was going to do it if I had time to stop and figure it out.

Q. Without regard to the distance apart—

A. (Intg.) Well, even that, I could make that model a little more elaborate if I had time to sit down and figure on it.

Q. Wherein is the drawing wrong now except with respect to the distances?

A. Well, this here model and this is a little wrong.
[261—38]

Q. Pointing to which one?

A. This No. 6 is a little wrong for this position; if No. 3 was changed a little more so that it would not make that—you see this No. 6, I have got it changed back into a different position as though she was going on a starboard helm.

Q. Why did you put these models in that position when you made the drawing then?

A. Why did I put them in that position?

Q. Yes.

A. You seen why. I started to put them down there and put them down there to the best of my recollection, but then I seen that I put that model a little wrong relative to the other one; if I change this model here it would be all right (illustrating); if I changed the third position a little bit, swung her over a little, it would be all right.

Q. Swung her more to the right?

A. Swung her stern around a little more.

Q. Why didn't you make the change when you were

(Deposition of Harry Deloss Gibbs.)

drawing it? At that time you thought you were laying them down correctly, didn't you?

A. I didn't think nothing about it at all. You people asked me to lay them models down there to the best of my recollection how they were.

Q. And you did so?

A. And I did so. And I see there is a little difference in the one there, that should be swung around a little more.

Q. Why could you see the "Argyll" better from the bridge than the lookout could on the forecastle-head? A. I was higher up for one thing.

Q. As a matter of fact, the man on the forecastle-head could not see you on the bridge? [262—39]

A. Sure, he could see all over the vessel from the forecastle-head.

Q. Wasn't the tan-bark piled up above the bridge? A. No.

Q. Didn't I understand you to state before the Inspectors that the tan-bark was piled up so that the man on the forecastle-head could not see you?

A. No, I didn't hear him make that statement.

Q. How high was your forecastle-head above the bridge?

A. The forecastle-head ain't above the bridge.

Q. How much below it?

A. Well, the forecastle-head in that vessel is about 7 feet high.

Q. How high is the bridge?

A. The bridge is about 16 feet.

Q. And the tan-bark was piled up nearly to the

(Deposition of Harry Deloss Gibbs.)

bridge, was it not?

A. Yes, it was piled up right to the foot of the bridge.

Q. That is to the floor of the bridge?

A. To the floor of the bridge, but it ain't piled up and it was not piled up in front of the pilot-house; that was on the side of the house I am talking about now.

Q. Didn't you testify before the Inspectors that the tan-bark came to within about 4 feet of the top of the pilot-house forward?

A. Four feet to the top of the pilot-house?

Q. Within four feet of the top of the pilot-house?

A. Yes, something like that—no, no; four feet of the top of the pilot-house?

Q. Within four feet of the top of the pilot-house, yes? A. That is about it, I guess.

Q. In the way that the tan-bark was loaded on the vessel [263—40]

Q. *In the way that the tan-bark was loaded on the vessel* could you hear plainly a whistle from abeam?

A. Sure, I could hear a vessel, anyplace.

Q. Was it not piled up on the side of the pilot-house?

A. Yes, but the bridge is away up on top of the pilot-house, and the bark is nowhere near the bridge, that is it is within an inch or two of it, but it has got no elevation, it is right below the bridge.

Q. The bridge, as I understand it, is on top of the pilot-house and the tan-bark was piled up to the floor of the bridge?

(Deposition of Harry Deloss Gibbs.)

A. The bridge ain't on top of the pilot-house; it is right on the after part of the pilot-house, and there is a hood that goes from the top of the pilot-house that you can speak down through it to the man at the wheel.

Q. What was the deviation on the course when she was southeast by south half south?

A. I don't know what the deviation was.

Q. Have you ever filed any written report of this accident with your owners? A. No, sir.

Q. Have you filed any written report with the Inspectors? A. Yes.

Q. Have you got a copy of it?

A. I had a copy of it; I have not now.

Q. Where is it?

A. I don't know where the copy is; it is down in my room, I guess.

Q. Did you turn it over to either your owners or to the attorneys for the owners?

A. I did not turn my report over to anybody.

Q. You have been in frequent consultation and discussion about [264—41] this case with your owners?

A. Well, I had a little talk about general subjects; yes.

Q. On several occasions you have gone over this whole collision?

A. We have never gone over this collision yet, we have had a few talks about it.

Q. As to how it happened?

A. As to how it happened, yes.

(Deposition of Harry Deloss Gibbs.)

Q. Did you ever make any drawings for them showing the courses of the vessels? A. No, sir.

Cross-examination.

Mr. WALL.—Q. Mr. Gibbs, in speaking of the “Argyll” as swinging, I notice that you almost always say that she swung to starboard, and the drawing shows it from a different position, that the “Argyll” herself always swung to port. Now, tell us just exactly what you mean when you say she swung to starboard. A. Who, the “Argyll”?

Q. Yes, you say she swung to starboard or she was swinging a little to starboard?

A. She was swinging on a starboard wheel.

Q. Whenever you say she swings to starboard you mean that she had her helm to starboard and that the bow of the vessel itself was swinging to port; is that right? A. Yes.

Q. That is what you meant when you said the “Argyll” was swinging to starboard? A. Yes.

Q. You say when you gave one whistle she answered. What whistle did she give in answer?

A. She gave one.

Q. She gave one blast? A. She gave one blast.

Q. How high up did the haze extend from the horizon, how high above the horizon? [265—42]

A. Well, the haze was right on the water and it was clear over head, you could see the stars, but the haze was up, oh, a little ways—an eighth of a mile, something like that.

Q. Did you see the range lights before the lookout

(Deposition of Harry Deloss Gibbs.)

reported them? A. Yes.

Q. You had already sighted them when he reported them to you?

A. Yes, I had seen them already.

Q. About how long before he reported them had you seen them, according to the best of your judgment?

A. I seen those range lights about a minute and a half or two minutes before he reported them.

Q. When you first saw them you say they were open, were they?

A. Yes, there was an opening between them.

Q. There was an opening between them then?

A. Yes.

Q. From the time that you saw them until you sighted the red light, what bearing did they have—did they keep on about the same bearing a point and a half, or did they draw a little bit off on you, or what was the fact in regard to that, as far as the “Gualala” was concerned, looking at them from the “Gualala”? A. I don’t understand that.

Q. You say you first sighted them a point and a half on your port bow, from this position, from that time until you opened up the red light did that range light keep on that bearing from you of a point and a half, or did it come around a little bit, did it draw a little bit more aft or a little bit forward—which was it?

A. It was drawing aft a little.

Q. Drawing aft on you a little bit? A. Yes.

Q. And when you saw the red light on the

(Deposition of Harry Deloss Gibbs.)

“Argyll” what distance [266—43] did you estimate that the vessels were apart then, according to your best judgment?

A. I should judge—when I saw the red light, you say?

Q. Yes.

A. I should judge they were about a mile away.

Q. About a quarter of a mile away you saw the green light, was it?

A. A quarter of a mile away, yes.

Q. And you put your helm to port as soon as you saw the red light; is that right? A. Yes.

Q. Now, when you started to back, of course you first stopped, first gave the signal to stop, didn't you? A. Yes, I did.

Q. And you had not altogether lost headway when you started to back—that is a fact, as you testified?

A. I started to back—I first stopped her, then backed.

Q. The vessel had not altogether lost headway through the water at the time you started to back full speed astern? A. Oh, no.

Q. You had the helm to port at the time you started to back? A. Yes.

Q. You still had the helm to port?

A. Yes, still had the helm to port.

Q. In backing the “Gualala” with the helm to port and with a little headway on, which way will her bow be thrown, to port or to starboard? Take her as I say, if she is going slowly through the water and she has been stopped, and the engines start to

(Deposition of Harry Deloss Gibbs.)

work full speed astern, which way will the "Gualala's" bow be thrown, to port or to starboard?

A. Why, her bow will be thrown to starboard.

Q. The "Gualala's" bow would be thrown to starboard? A. Yes.

Q. In the way she steers would it tend to be thrown rather [267—44] rapidly to starboard or slowly to starboard, or what would be the fact in regard to it?

A. I will tell you, I have never been on the bridge when that vessel has been handled, so I don't know—or any other bridge.

Q. The first impact you say was about 25 feet from the stem on the port side of the "Gualala"?

A. Yes.

Q. Do you know how far she cut into the "Gualala"?

A. Well, I have seen the "Gualala" since she was raised; she cut in about 40 feet—she trimmed her right along until she got up against a good solid place, then she cut her in towards the keel; that is where she finished her.

Q. How big an opening did she make?

A. She made an opening about 40 feet long.

Q. How do you know it was 40 feet long?

A. From where she first hit her to where she stopped.

Q. From forward to aft an opening about 40 feet long? A. Yes.

Q. Was there anything on the "Gualala" to indicate the angle at which the "Argyll" went in, and

(Deposition of Harry Deloss Gibbs.)

if so, what was it?

A. You could see on her stem where she struck her, on the "Gualala's" stem you can see the exact way she struck, or the way she ran into her.

Q. What does that show on there?

A. Well, it shows that she came right up and hit her, and there is a clean cut there—it is cut clean.

Q. Does the cut show whether she hit at an acute angle like that or at right angles or how?

A. Well, she hit at an acute angle from forward.

[268—45]

Q. She hit at an acute angle forward and carried it about 40 feet aft? A. 40 feet aft.

Q. What were the conditions before the accident as to the port side of the "Gualala" there where the blow was received, as to whether or not there were any of the crew bunked there, or lived there?

A. There were three sailors that had them bunks and she struck right in the center of the bunks about three feet from where their feet was.

Q. Did the "Argyll" carry away by the collision the load that was on the deck of the "Gualala" near where the wound first began, that is the tan-bark or the ties, were they knocked off from the top of the deck?

A. They were all overboard at that time, that is, it knocked that side, just plowed it right along, took it overboard.

Q. Took all the deck-load?

A. Not all of it off but it tramped it along.

(Deposition of Harry Deloss Gibbs.)

Q. Did you see the bow of the "Argyll" after the collision at all?

A. You mean with reference to the wreck?

Q. With reference to the collision of the bow of the "Argyll" after the collision?

A. No, I never looked at her bow.

Q. You did not make any observation of it at all?

A. No.

Q. After the collision where did you go to get clear of the "Gualala," how did you get clear of the "Gualala"?

A. Well, after the collision, she was listing so heavy to starboard I was going to blow a distress signal for the "Argyll" to stand by us, and she was listing that bad that I [269—46] could not get hold of the whistle string; then she straightened up a little and the sailors came piling out of the fore-castle and hollered that there were two men killed in the fore-castle, and another fellow hollered there is two men overboard; and so everybody got around the boat on the port side and we shoved it overboard with main strength and awkwardness, and she was listing over that much that we could walk right down the side of the vessel and shove the boat right down into the water, and the three of us jumped in that boat.

Q. On the lee side?

A. No, we went overboard on the weather side.

Q. The high side? A. The high side.

Q. You went overboard on the high side?

A. Yes. They were trying to launch the boat on

(Deposition of Harry Deloss Gibbs.)

the other side, they couldn't because she was listing so bad; you could not walk on the deck unless you had hold of something.

Q. You got around there and got into the boat, did you?

A. We got down and got into the boat; there was me and two men went into the boat, me and two sailors.

Q. Did you take anybody off the "Gualala" into the boat?

A. Then we pulled around the bow to look for these two men that were overboard, and we could not find them; so then we pulled around to the star-board side of the vessel and there was two fellows sitting there hollering that their legs were broke, and we pulled over and took them in the boat; but we could not get close enough to the vessel, so one of them, we shoved the boat in and got one of them, and the other fellow had to jump overboard to get in the boat, and we had to pick him up; we left with these two and went right to the "Argyll" with them. [270—47]

Q. When you saw the green light of the "Argyll," when you first saw the green light of the "Argyll" had you lost sight of the red light?

A. Yes, I did not see the red light.

Q. At the time that you saw the green light you could not see the red light?

A. I did not see the red light.

Q. When you first saw the red light could you see it plainly? A. Yes, I could see it plain.

(Deposition of Harry Deloss Gibbs.)

Q. When you first saw the green light could you see that plainly? A. Yes.

Q. There was no mistaking the fact that it was a green light or was a side light, the green side light of the "Argyll"?

A. No, there was no mistake in the fact of that.

Q. At that time the vessels were about how far apart? A. About a quarter of a mile.

Q. That was when you gave the signal to back?

A. To back.

Q. And at that time you say in your opinion a collision was inevitable, it was bound to happen?

A. It was bound to happen; nothing could prevent it then.

Q. During your watch when you went back to look at the log, what did the log show the speed of the "Gualala" to be?

A. Well, when I put the log from 12 to 2, when I put the log down, I noticed she was making about, she had made about 16 miles.

Q. During the 2 hours?

A. During the two hours.

Q. Sixteen knots you mean? A. Sixteen knots.

Q. In two hours? A. Yes.

Q. Now, then, you said that you could not remember what distance off the mate told you that he had passed Point Arena, that is [271—48] right, is it not? A. Yes.

Q. And for that reason you put no course down on this plat that Mr. Campbell showed you: that is correct?

(Deposition of Harry Deloss Gibbs.)

Mr. CAMPBELL.—I submit the record shows why he did not put it down? A. Yes.

Mr. WALL.—Q. Now, as a matter of fact, if you cannot recall the distance off it would be impossible to lay down a course that would correctly represent what course the vessel made with reference to the shore; that is correct, is it not? A. Yes.

Q. That is to say, a course laid down as southeast by compass without knowing the distance that you passed Point Arena could be anywhere near shore or off shore, depending upon the distance you passed Point Arena, would it not? A. Yes.

Q. So that any course laid down on the southeast course would not correctly represent how far the shore was from your course unless you knew the distance you were when you took your departure from Point Arena; that is right, isn't it?

A. That is right.

Q. Now, I want to get cleared up again on this question of backing; you and I have different ideas of about what we mean when we say a vessel swings to starboard. When I say a vessel swings to starboard I mean that the head goes to starboard. I want to ask you again about this question of backing. You say the "Gualala" in this position here, when your engine was stopped, the "Gualala" was going ahead a little and you had your helm to port?

A. Yes.

Q. When you backed, how would the "Gualala's" bow swing; would the "Gualala's" bow swing over to the "Gualala's" port, [272—49] or would the

(Deposition of Harry Deloss Gibbs.)

“Gualala’s” bow swing over to the “Gualala’s” starboard?

A. Her bow would swing to starboard.

Q. Her bow would swing a little to starboard when she was backing with her helm to port?

A. Yes—no, no.

Q. You see, you have got your helm to port; say your helm is to port and your rudder is over to the starboard, the rudder would stick out to starboard; now you were backing against your rudder there. Which way would the bow of the “Gualala” swing when you were backing?

A. The bow in this case would swing to port.

Q. Swing to port and the stern would swing around to starboard? A. Yes.

Redirect Examination.

Mr. LILLICK.—Q. In speaking of these times and distances, do you want to be understood as speaking from your recollection, approximately, or what is the situation about it?

A. Well, I did not take any time and I did not measure no distance and so on.

Q. You are only speaking from the best of your recollection? A. The best of my recollection.

Q. On your cross-examination to Mr. Campbell you said that that third position was wrong. Tell us why it is wrong—that is the third position with reference to the “Gualala”?

A. The third position of the “Gualala” is all right, but the sixth position of the “Gualala” is all wrong.

(Deposition of Harry Deloss Gibbs.)

Q. Why is the sixth position all wrong?

A. Because if we would take this for a southeast line, which the "Gualala" was swinging, this model would be, she would be heading about south south-east, and this model, she would be heading about 2 points off the model.

Q. Will you take that model and put it down as you estimate it to be correct?

A. If that would be a southeast course right there, this would be northeast and southwest here (illustrating).

Q. The line "A" to "B"? A. "A" to "B."

Mr. WALL.—Q. "A" would be southwest, would it?

A. "A" would be southwest, and "B" would be northeast.

Mr. LILLICK.—Q. Take the model there and with a dotted line show what you estimate to be the correct situation with reference to the "Gualala" in this sixth position.

A. Well, let me see; we have got to figure a little different because here I wrote down these models without any scale at all. This will be a little different here. I am not certain that this is exactly right.

Q. Take the model and mark upon the chart the position of the "Gualala" as to her course at the time the two vessels came together as you best recollect it with a dotted line.

Mr. CAMPBELL.—You are asking for a corrected position for position six?

Mr. LILLICK.—Yes, which upon the other exam-

(Deposition of Harry Deloss Gibbs.)

ination he put upon the chart as I understand it to show the point of impact and relative courses toward each other, but not the course upon which the "Gualala" was then steering.

A. She was heading, I don't know whether she was steering much [274—51] or not—a vessel is not steering much when she is swinging around.

Q. Put the course as you best recollect it upon which the vessel was at the moment of impact?

A. I know for a fact we was heading south south-west just a few seconds before the vessels ran together. I know that to be a fact because I looked at the compass. Just at the time they struck I don't know, but just a few seconds before that I know the "Gualala" was laying in that position. This position, you see—

Q. (Intg.) This position, pointing to third position?

A. Yes, this position is not laid right. The model should be laying in that position, you see.

Q. Mark it.

Mr. WALL.—I would like to have the record show that the witness first drew on the paper a straight line to represent the southeast direction in which the "Gualala" was steering, and after that he drew different positions, first position, second position, third position, and sixth position of the "Gualala" and the first, second, third, fourth, fifth and sixth positions of the "Argyll"; and then upon examination to correct the sixth position of the "Gualala"; before proceeding to do that he drew all of the lines that repre-

(Deposition of Harry Deloss Gibbs.)

sent the different points of the compass, and after he had done that then he has proceeded to testify in response to questions by Mr. Lillick.

Mr. LILLICK.—Q. What does the position “Gualala A” represent?

A. Well, the position “Gualala A” represents the way that that vessel was heading at the exact time of the [275—52] collision.

Q. At the exact time of the collision or when you noticed the compass before the *compass before the* collision? A. When I noticed the compass.

Q. How long was that before the actual impact?

A. About 3 or 4 seconds.

Q. How was the “Gualala” then going, ahead or astern, upon what helm?

A. She was going ahead on the port helm, going ahead about a mile an hour.

Mr. CAMPBELL.—Q. On the hard aport helm?

A. On the hard aport helm.

Q. That is the position she had swung to under her hard aport helm?

A. That is the position she was laying the last time I looked at the compass just three or four seconds before the collision.

Q. It was the position that she had swung to under a port helm? A. Yes.

Mr. LILLICK.—Q. Had you ever had occasion to call the captain before during the time you were on the bridge at any time?

A. Yes, I had occasion to call him.

Q. How did you call him?

(Deposition of Harry Deloss Gibbs.)

A. I used to go over and jump up on top of his room and holler down to the door.

Q. Would you have had time to have called the captain in that way after you saw the "Argyll's" green light, and when you commenced to back?

A. Well, I hardly had time for anything, the time was too short.

Q. How long was the "Gualala" turning turtle after the collision? [276—53]

A. I could not answer that question because she did not turn turtle until about 8 or 10 hours afterwards. I guess they were towing her.

Q. Have you any approximate idea how long she was in the water in that condition? A. No.

Q. Where was the log-book when you last saw it?

A. It was on the hood of the pilot-house.

Q. What was the condition of the hood on the pilot-house after the "Gualala" was righted, do you know?

A. It was all gone, the pilot-house was gone.

Mr. CAMPBELL.—Mr. Linderman has stated he has not the log-book; that is sufficient for us.

Mr. LILLICK.—I wanted to clear that up.

Q. Mr. Gibbs, could you see the lookout on the fore-castle head from the position you were in on the bridge? A. Yes, I could see the lookout.

Q. How was the bark piled directly in front of the bridge? A. Directly in front of the bridge?

Q. Yes.

A. Well, directly in front of the bridge the bark is about 4 feet from the top of the house, but that vessel is hard to load by the stern, and they always cut out

(Deposition of Harry Deloss Gibbs.)

the two forward tiers, the first two tiers from the forecastle head, they are always low.

Q. Was that her condition at the time of the collision?

A. Yes, that was her condition. You can always look over the top of it. It is hard to get that vessel down by the stern; you have got to keep piling up aft and keeping off forward to get her to go down by the stern. [277—55]

Recross-examination.

Mr. CAMPBELL.—Q. You stated in answer to Mr. Wall's question that the bow of the "Gualala" would swing to port when she began to back, whereas when I asked you regarding it you stated it would swing to starboard.

A. Well, I suppose there is a misunderstanding about a vessel swinging to starboard and her helm to starboard.

Q. Now, with this vessel making 8 knots an hour and you reverse her with her helm hard aport, which way would her bow swing? Would it not swing to starboard? Would it not continue to swing to starboard under the hard aport helm?

A. Well, I don't know—

Q. (Intg.) Put it this way: You did not swing towards the "Argyll," you would swing away from the "Argyll"?

A. Yes, we would swing away from the "Argyll."

Q. Do you know whether this vessel had a right-hand propeller or left-hand propeller?

A. I don't know.

(Deposition of Harry Deloss Gibbs.)

Q. If she had a right-hand propeller, as she was working ahead her propeller would turn to the right, would it not? A. Yes.

Q. When she was reversing it would turn to the left, would it not? A. Yes.

Q. As she reversed would not that propeller work to the left, pull the stern around to the left and swing her bow to starboard?

A. It would depend a great deal on where the wheel was at and what class of a vessel she was and how she was built and lots of other things.

Q. Isn't that the universal rule that vessels with right-hand propellers back to port?

A. Yes, that is a universal rule. [278—56]

Q. When you say they back to port, you mean her stern swings to port, when she is backing, don't you—isn't that true with a right-hand propeller?

A. It swings to port—I don't know about that. I don't know how to answer that question very well. The stern might swing and it might not.

Q. Isn't it common knowledge among navigating officers that a vessel with a right-hand screw will back to port; haven't you heard the expression "back to port"? A. Yes, I have heard the expression.

Q. It is a common expression? A. Yes.

Q. Most vessels do that, don't they?

A. It depends on wind, weather and sea and a whole lot of other things.

Q. Given the conditions had there that night, with no wind and no sea, would not those vessels with right-hand screws back to port?

(Deposition of Harry Deloss Gibbs.)

A. I guess they would ; I don't know.

Q. Now, your vessel still had headway, as I understood it, at the time of the collision ?

A. Yes, she was going about a mile an hour.

Q. But still under the influence of her hard aport helm ?

A. Still under the influence of the hard aport helm.

Mr. CAMPBELL.—Will you admit, Mr. Lillick, that this vessel has a right-handed screw ?

Mr. LILLICK.—We will admit that she has a right-handed screw.

Recross-examination.

Mr. WALL.—Q. Mr. Campbell's question about backing with a right-handed screw is generally understood to apply to a vessel when she backs, when she is not going ahead in the [279—57] water, is it not ? A. Yes.

Q. That is, she is simply backing, she is not going ahead, she has no headway, that is your understanding of the question, is it not ? A. How is that ?

Q. She simply backs, and gathers sternway ; if she has a right-hand screw the stern goes as Mr. Campbell stated—that is your understanding of the question ? A. Yes.

Q. In putting this "Gualala A" on the paper here, that was put in, was it not, after you had drawn all these other figures ? A. Yes.

Q. And the position in which it is placed in, this "Gualala A" has no reference to the relative positions of the "Gualala" prior to the collision as you have drawn them, first, second, third, and sixth, has

(Deposition of Harry Deloss Gibbs.)

Q. And the position that you have shown as "Gualala A," was a position before the collision, was it not? A. Yes, right before the collision.

Q. How long before?

A. Well, five seconds before the collision.

Q. But still under the influence of a hard aport helm?

A. Still under the influence of her hard aport helm.

Q. Now, going back to this question of backing again: Don't you know and isn't it a fact that when a vessel is swinging on a hard aport helm, going ahead at full speed, and she is reversed, having a right-hand screw, that the reversing will tend to swing her head all the quicker to starboard?

Mr. WALL.—The question is whether he knows or not. I would like him to answer yes or no, whether he knows. When you answer that, say, yes, you know, or you don't know. Read the question.

(The last question repeated by the Reporter.)

A. Yes, it will.

Mr. CAMPBELL.—I will offer the two charts in evidence and ask to have them marked "Claimant's Exhibits 1 and 2." [282—60]

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

I, Francis Krull, a United States Commissioner for the Northern District of California, do hereby certify that the reason stated for taking the foregoing deposition is that the testimony of the witness Harry Deloss Gibbs is material and necessary in the

cause in the caption of the said deposition named, and that he is bound on a voyage to sea and will be more than one hundred miles from the place of trial at the time of trial.

I further certify that on Saturday, November 30, 1912, I was attended by Ira S. Lillick, Esq., proctor for the libelant, and A. W. Beadle Co., Ira A. Campbell, proctor for the claimant, and F. R. Wall, proctor for Konstant Latz, and by the witness, and that the witness was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said cause; that said deposition was, pursuant to the stipulation of the proctors for the respective parties hereto, taken in shorthand by Edward W. Lehner, and afterwards reduced to type-writing; that the reading over and signing of said deposition of the witness was by the aforesaid stipulation expressly waived.

Introduced in connection therewith and referred to and specified therein are Libelant's Exhibit "A" and "Claimant's Exhibits 1 and 2."

I further certify that I have retained the said deposition in my possession for the purpose of delivering the same with [283—61] my own hand to the United States District Court for the Northern District of California, the Court for which the same was taken.

And I further certify that I am not of counsel nor attorney for any of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

IN WITNESS WHEREOF, I have hereunto sub-

scribed my hand at my office in the City and County of San Francisco, State of California, this 3 day of Mch. 1913.

[Seal]

FRANCIS KRULL,

United States Commissioner, Northern District of California, at San Francisco.

[Endorsed]: Filed Mar. 6, 1913. W. B. Maling, Clerk. By Francis Krull, Deputy Clerk. [284—62]

In the District Court of the United States, in and for the Northern District of California.

No. 15,327.

THE GUALALA STEAMSHIP COMPANY,
Libelant,

vs.

The Steamship "ARGYLL," Her Engines, Boilers,
etc.,

Respondent.

THE UNION STEAMSHIP COMPANY,
Claimant.

BE IT REMEMBERED that on Saturday, December 14th, 1912, pursuant to stipulation of counsel hereunto annexed, at the offices of Messrs. Page, McCutchen, Knight & Olney, in the Merchants' Exchange Building, in the City and County of San Francisco, State of California, personally appeared before me, Francis Krull, a United States Commissioner for the Northern District of California, to take acknowledgments of bail and affidavits, etc.,

Fred. Carlson, a witness produced on behalf of the libellant.

Ira S. Lillick, Esq., appeared as proctor for the libellant, and A. W. Beadle Co., and Ira A. Campbell, Esq., of the firm of Messrs. Page, McCutchen Knight & Olney, appeared as proctor for the claimant, and F. R. Wall, Esq., appeared as proctor for Konstant Latz, and the said witness, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth. [285—1]

(It is hereby stipulated and agreed by and between the proctors for the respective parties, that the deposition of Fred Carlson may be taken *de bene esse* on behalf of the Libellant, at the offices of Messrs. Page, McCutchen, Knight & Olney, in the Merchants' Exchange Building, in the City and County of San Francisco, State of California, on Saturday, December 14th, 1912, before Francis Krull, a United States Commissioner for the Northern District of California, and in shorthand by Edward W. Lehner.

It is further stipulated that the deposition, when written out, may be read in evidence by either party on the trial of the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of taking said deposition, and that all objections as to materiality and competency of the testimony are reserved to all parties.

(Deposition of Fred Carlson.)

It is further stipulated that the reading over of the testimony to the witness and the signing thereof is hereby expressly waived.) [286—2]

[Deposition of Fred Carlson, for Libelant.]

FRED CARLSON, called for the libelant, sworn.

Mr. LILLICK.—Q. What is your full name?

A. Fred Carlson.

Q. Age? A. 34.

Q. Occupation? A. Seaman.

Q. Were you on the “Gualala” at the time of the collision between the “Gualala” and the “Argyll” in October? A. Yes, sir.

Q. What position did you occupy on the “Gualala”; how were you working?

A. I was at the wheel.

Q. You were at the wheel at the time of the collision? A. Yes.

Q. What were your duties on board, were you a seaman or what? A. Yes, sir.

Q. What time did you go on watch, the evening or the morning of the collision?

A. 12 o'clock we get the watch, and at 2 o'clock I came at the wheel.

Q. Were you at the wheel from then on up to the time of the collision? A. Yes, sir.

Q. What course were you steering at 2 o'clock?

A. Southeast.

Q. What course were you steering at the time of the collision, up to the time of the collision?

A. The same course, southeast, right along.

(Deposition of Fred Carlson.)

Q. What first called your attention to the "Argyll"? Do you know what I mean, Carlson?

A. No, sir, I don't understand now.

Q. What called your attention to the "Argyll" first? A. I can't get that either.

Q. What time, Carlson, did you see, if you did see, the lights of another vessel that night before the collision? [287—3]

A. I didn't see no lights at all before the one we was in collision with.

Q. When did you see those lights, do you remember about what time it was?

A. When the collision happened?

Q. Before the collision?

A. That was at 10 minutes past three in the morning.

Q. Now, what directed your attention to the fact that there was another vessel near you?

A. Well we blowed one blast, that is all I knew, and then she blowed one blast back.

Q. Then she blowed one blast back; who blowed that blast back? A. The "Argyll."

Q. Did you see the "Argyll" after you heard the one whistle from the "Gualala"? A. No.

Q. You did not see her? A. No.

Q. Did you see any lights?

A. Not before the whistle was blown.

Q. What did you see when the whistle was blown on the "Gualala"?

A. I was ordered to port my wheel.

Q. Did you look out to see if there was a vessel

(Deposition of Fred Carlson.)

out there, or anything after the whistle was blown on the "Gualala"?

A. No, sir. I looked up through the window and I happened to see the mast head light. That is all I did. I was busy at the wheel, so I never saw any more of it.

Q. Where were you standing in the pilot-house?

A. On the starboard side of the wheel.

Q. You were standing on the starboard side of the wheel? A. Yes.

Q. Is the pilot-house closed in on the "Gualala," has she glass around the pilot-house?

A. Yes, sir, there is glass all around.

Q. Were those glasses open that night, were the windows open in the pilot-house? [288—4]

A. No, except the front window, the middle window on the front of the pilot-house was open halfway down, about that much, that is all, halfway about (illustrating).

Q. About 18 inches? A. Yes, sir.

Q. When the whistle was blown on the "Gualala" did you look out the window of the pilot-house to see if you could see anything?

A. Yes, sir, I looked up then.

Q. What did you see?

A. I saw the "Argyll's" mast light.

Q. How far away were they about then?

A. About a mile and a quarter, a mile, something like that, I guess.

Q. On which bow of the "Gualala" were those

(Deposition of Fred Carlson.)

lights showing? A. The port bow.

Q. About how far on the port bow?

A. About a point, a point and a quarter, something like that, I don't know exactly.

Q. Then what happened after that one whistle on the "Gualala." Did you hear any whistles on the "Argyll"?

A. No, I did not hear any whistles on the "Argyll."

Q. Do you remember whether or not the "Argyll" answered the one blast of the whistle from the "Gualala"? A. Yes, she answered.

Q. Then you did hear a whistle? A. Yes.

Q. After that what happened, Carlson, about orders from the officer on the bridge of the "Gualala," and what did you do?

A. I got orders for to port my wheel.

Q. Did you port your wheel?

A. Yes, sir; and then the second order came to put her hard over, as hard as I could get it.

Q. How long after that first order to port your wheel did the second order come to put her hard over?

A. That was not more than about half a minute, something like that.

Q. What kind of a steering gear has the "Gualala"? [289—5]

A. Hand-steering gear, with a rope around the drum.

Q. How did you get the wheel over? How did you pull her over, spoke by spoke, or swing her quickly?

(Deposition of Fred Carlson.)

A. Spoke by spoke, only one at a time; that goes slow too, when the wheel goes hard over.

Q. How long was it, Carlson, after you saw those lights on the "Argyll" after the whistle had been blown until the time of the collision, to the best of your recollection?

A. About three minutes, or three and a half, something like that.

Q. How long after you had your wheel hard over do you think it was over until the time of the collision?

A. From the time the wheel was hard over, that was not more than a minute before the collision happened.

Q. In the meantime and after the order had come down to you to put your helm to port, did you take any notice of the "Argyll," or the lights upon her, as to whether they were changing in any way?

A. No, I did not notice anything like that at all.

Q. Did you look out towards the "Argyll," or do you mean you did not see them at all?

A. Well, I looked, yes, but it looks to me like she was following us right along, that is all; we couldn't get no further apart from her, she was coming up on us right along.

Q. Did you notice her side lights at all during that time, her red light, or her green light?

A. No, sir, not before she bumped in, when I run out of the pilot-house; that is the only time I saw her side lights.

Q. Carlson, will you take this paper and these

(Deposition of Fred Carlson.)

two models, the larger one of which we will call the "Argyll" and the [290—6] smaller one the "Gualala," and show the relative positions of the two vessels when they came together on the paper? Just place those two models upon the paper in the positions in which the two vessels came together.

A. That is just the way they looked when they turned into one another.

Mr. LILLICK.—We offer that in evidence and ask that it be marked Libelant's Exhibit Carlson "A."

(The paper is marked Libelant's Exhibit Carlson "A.")

Q. Did you hear any whistles blown by either the "Argyll" or the "Gualala" after that one whistle that was blown on the "Gualala" and the answering whistle from the "Argyll"? A. No.

Q. Do you know whether any whistles were blown on the "Gualala" or on the "Argyll" after that one whistle?

A. No, I did not hear any, nobody else did either.

Q. Did you notice whether the "Argyll" paid off to starboard after you put your wheel to port?

A. That was the way it looked; she was paying off to starboard instead of going to port.

Q. How many points do you think she swung over from the time you got the first order to port your helm until the collision itself?

A. We were four points off the course the time we struck, but then the "Argyll" pushed us away off after that, turned us around almost.

(Deposition of Fred Carlson.)

Q. How far from your stem did the "Argyll" strike you?

A. It would be by the forecastle. I don't know how far it is from the stem, how far it would be—about 25 feet, something like that.

Q. What did you do after the collision?

A. Made the boats [291—7] ready.

Cross-examination.

Mr. CAMPBELL.—Q. Now, Mr. Carlson, I understand that you took the wheel at 2 o'clock?

A. Yes, sir, I did.

Q. What course was she steering then?

A. Southeast.

Q. That was by the pilot-house compass?

A. Yes.

Q. The compass that was in front of you?

A. Yes.

Q. Had you passed Point Arena at that time?

A. Yes.

Q. Were you on watch when you passed Point Arena?

A. No, we passed Point Arena before 12 o'clock.

Q. Who was the quartermaster on watch at the wheel when you passed Point Arena?

A. That was the fellow from the other watch; I don't remember who it was.

Q. You continued to hold the southeast course by the pilot-house compass up to the time that you ported your helm?

A. Yes, we were steering the same course all the time.

(Deposition of Fred Carlson.)

Q. Where was the second mate, in the pilot-house with you?

A. No, he was up on the bridge above me.

Q. The first that you knew about the fact that you were approaching another vessel, or that you were coming near to the "Argyll" was when the second officer of your vessel told you to port your helm?

A. No, that was when he blowed the whistle.

Q. When he blew his whistle, that was the first you knew about it? A. Yes.

Q. How soon after he blew his whistle did you start to port your helm?

A. After he blowed the whistle we started to port the helm right away.

Q. Then the next order to you was to hard aport?

A. Yes. [292—8]

Q. When he blew his whistle did you look up to see whether there was any other vessel coming?

A. Yes, I looked up through the window.

Q. But you could not see anything then, could you?

A. No, I could not see anything; I saw her mast lights, that is all, sticking out through the fog bank.

Q. You could see her masthead light? A. Yes.

Q. Could you see both of her range lights?

A. No, I did not notice anything; I was busy with the wheel; the hand-steering gear is heavy, you cannot stand and look around all the time.

Q. Just as soon as your vessel blew one whistle you got the order to port your helm? A. Yes.

Q. And you immediately became busy porting the helm? A. Yes.

(Deposition of Fred Carlson.)

Q. So that you did not pay much attention to what was outside? A. No, I did not pay no attention.

Q. You were busy getting the helm over?

A. Yes.

Q. What time was this—you say 10 minutes after three? A. Yes, in the morning.

Q. You were then standing on the starboard side of the wheel?

A. Starboard side of the wheel, yes.

Q. What window was down, was that the middle window?

A. The middle window was open about so much, just let down a little bit.

Q. From the top? A. For the air to come in.

Q. From the top? A. Yes.

Q. It was not let down far enough to look through that space? When you looked out you had to look through the glass, didn't you? A. Yes. [293—9]

Q. Immediately after you got your order to port your helm you got another order to hard aport?

A. Yes.

Q. Had you got your helm over to port in response to the first order before you got the hard aport order?

A. Yes, she had started coming over.

Q. She started to swing?

A. Yes, she started to swing.

Q. Did you get your order to hard aport before you had steadied her on her course?

A. No, she was swinging right along.

Q. You never steadied her at all after the first order? A. No.

(Deposition of Fred Carlson.)

Q. When you said that your order, your hard aport order, came half a minute after your port order, that is simply a guess on your part as to the length of time; isn't it? A. That is just a guess, yes.

Q. How far off did you judge the masthead light of the "Argyll" to be when you saw it?

A. Well, I judge it to be about—well, I could not say for sure how much—I judge about two miles or a mile and three-quarters, somewhere around that.

Q. A mile and three-quarters? A. Yes.

Q. From the time you got the order to port up to the time of the collision you were busy putting your wheel over to hard aport? A. Yes.

Q. From where you had it when you were running on a southeast course to get it over to hard aport?

A. Yes.

Q. And the collision came after you got your helm hard aport?

A. Yes, the collision came after that.

Q. But you did not see any of the side lights of the "Argyll" until after you got out of the pilot-house? A. No; not before that. [294—10]

Q. What side light did you see then?

A. The starboard light.

Q. The green light? A. Yes, this one.

Mr. LILLICK.—Pointing to the green light of the "Argyll."

Mr. CAMPBELL.—Q. When the "Argyll" struck you, she struck about at the break of the fore-castle head?

A. Yes, about the break of the forecastle head.

(Deposition of Fred Carlson.)

Q. And she slid along you, didn't she, she slid up along you?

A. Yes, she rammed a big hole in her, a hole about 35 feet long.

Q. Coming down on the "Argyll" you took care of one of the sailors that was injured, one of the "Gualala's" sailors that were injured, didn't you?

A. Yes, there were two of them.

Q. You took care of them?

A. No, the second mate; that fellow what was on the boat, they took care of them fellows.

Q. Did you help take care of them?

A. That was crippled up in the forecastle-head.

Q. Did you help take care of them?

A. Yes, I helped to take care of them, but they were in the boat and they got them in the boat any way and sent them over to the "Argyll."

Q. After they were on the "Argyll," coming back to San Francisco, didn't you help to take care of them?

A. Yes, sure we took turn about it, all of us.

Q. What did you mean when you said on board the "Argyll" that if the second mate had not come on to the bridge and ordered your helm to port everything would have been all right? A. Of our boat?

Q. Yes.

A. I don't know. We were going the right way, but so far as our understanding of the other boat was he was making a mistake in putting the wrong helm.

Q. Don't you remember making that remark on the "Argyll" that the "Gualala" would have been

(Deposition of Fred Carlson.)

all right if the second officer [295—11] had not ordered his helm hard aport?

A. Well, that I didn't hear, that I don't know.

Q. You did not hear; you don't recall now?

A. No.

Q. You don't remember, I mean? A. No.

Q. How high was the tan-bark piled in front of your pilot-house?

A. It was lying in a heap, but it was not very high.

Q. Could you see the lookout on the forecastle-head?

A. Yes, I could see the man on the forecastle-head; I could see over the bark.

Q. You could see over the bark?

A. Yes; that is if he was going right away up by the stem, but if he was down close underneath the bark why then I could not see him, of course.

Q. Were you on the lookout before you took the wheel? A. No.

Q. Where were you between 12 and 2?

A. I had free then, I was around.

Q. You were on watch, weren't you?

A. Yes, sure.

Q. Whereabouts were you?

A. I was amidships for a while, then I was down in the forecastle for a while, and two o'clock came and I had to go to the wheel.

Q. Did you stand on the lookout at all?

A. No, not that watch, I had no lookout.

Q. Had you been on the lookout since you left port?

(Deposition of Fred Carlson.)

A. No, not that night. We left it in the evening and came on watch at 12 o'clock again.

Q. How much higher than the lookout was the tan-bark?

A. That was just about level with the man's head on the forecastle-head, that is all, not quite as high as that.

Mr. WALL.—Q. Carlson, were you swinging to starboard at the time the collision happened?

A. Yes. [296—12]

Q. Did you notice what course your vessel was heading at the time that the vessels came together?

A. Yes, south southeast.

Q. South southeast by your pilot-house compass when they came together?

A. Yes,—just at the time they struck, why then we were heading south southwest at the time, that was only through the pushing of the one vessel against the other.

Q. That was because the "Argyll" pushed you farther around? A. Yes.

Q. I mean just when they came together how were you heading before she pushed you around?

A. That was south southeast.

Q. How far did she go back on you after she struck, the "Argyll"?

A. How far did she go back?

Q. How far back did she push on you, about how many feet?

A. I don't know. You mean how far she run along?

(Deposition of Fred Carlson.)

Q. After she struck you there how far back, how many feet back, did she push? A. I don't know.

Q. About? A. I did not notice that.

Q. How far in did she run into you, do you know?

A. About 35 feet, or nearly 40 feet I heard them say.

Q. You don't know this yourself?

A. I don't know it, I don't know how big the hole is; I heard them say it was a 35 or 40 foot hole.

Q. When you looked out of the window, that was the first time, did you see any light on the "Argyll"?

A. Yes.

Q. What light did you see on her when you looked out, what light or lights?

A. It was the mast light.

Q. Just saw one masthead light?

A. That is all, I didn't notice to see the other one
[297—13]

Q. You didn't see the other one, the other white light?

A. No, I was so busy with the wheel then I didn't have a chance to look around.

Q. When you looked through the window did you stick your head through, or just see through the glass?

A. No, just saw through the glass, that is all.

Q. Through the glass? A. Yes.

Q. Did you go to the front part of the wheel to go up to the glass and look through, or did you look from where you were at the time?

A. From where I was.

(Deposition of Fred Carlson.)

Q. From where you were at the wheel?

A. Yes.

Q. You were standing on the starboard side?

A. Yes, I was standing on the starboard side.

Q. Of the wheel? A. Yes.

Q. In what direction from your ship did you see that light, the "Argyll's" white light?

A. They were on our port bow.

Q. You saw it on your port bow? A. Yes.

Q. About how far off on your port bow?

A. About a point, or a point and a half, something like that.

Q. Then you estimate the distance was about how far away from you?

A. About a mile and three-quarters.

Q. About a mile and three-quarters?

A. Perhaps they were two miles, I don't know for sure.

Q. You say it was in the fog bank over there?

A. Yes, the stars were bright as anything above; just on the water line you could see the fog bank—on the water line, on the water, that was just the same as a fog bank.

Q. There was a fog bank along the water line?

A. Yes.

Q. It did not extend up above the masthead light?

A. No.

Q. You could not see either the "Argyle's" red light, or the [298—14] green light at the time that you saw her masthead light? A. No.

(Deposition of Fred Carlson.)

Q. Now, you are sure it was over on your port bow, are you?

A. Yes, she was over on our port bow.

Q. How long was it after you saw the "Argyll's" white light before you got the order to put your helm to port?

A. Right after the whistle was blown.

Q. How long after you saw the light before the whistle was blown?

A. I did not see any light before the whistle was blown.

Q. You couldn't see the "Argyll's" white light before the whistle was blown? A. No.

Q. You saw it after the whistle?

A. I just looked at it then.

Q. Was the whistle blown just before you saw the light? A. Yes.

Q. You were swinging to starboard from that time right straight along until the time of the collision?

A. Yes, right down to the collision. That boat is supposed to be the "Gualala" there (pointing).

Q. That was the position it had when they came together?

A. That was the position when they came together.

Q. You don't know how fast you were going, do you? A. No.

Q. Do you know anything about any signals to the engine-room?

A. No, I don't know anything about the signals to the engine-room.

(Deposition of Fred Carlson.)

Mr. CAMPBELL.—Q. Mr. Carlson, did you have a binnacle light in your pilot-house? A. Yes.

Q. What kind of a light was that?

A. An electric light.

Q. An electric light?

A. Yes, an electric binnacle light.

Q. How big a spot did it make on the compass?

[299—15]

A. It was all over the compass, sure.

Q. All over the compass?

A. Yes, there is only a little hole, the glass is opened so it can't shoot through only a little bit of a hole, that the light goes through.

Q. Where it goes through the binnacle?

A. Yes, so it just shows on top of the compass and no more, so that it is dark all but there.

Q. It don't shine all over the top of the compass?

A. Yes, just so you can read the compass, that is all the light that was given and no more.

Q. Up to the time that you heard the whistle you had been looking at that binnacle light all the while, hadn't you?

A. I was looking at the binnacle once in a while, yes, sure.

Q. You were keeping your eyes on the compass?

A. At the compass.

Q. Didn't you have to keep your eyes on the compass all the time?

A. Yes, certainly, I had to keep my eyes pretty near all the time on the compass.

Q. Did she steer steady?

(Deposition of Fred Carlson.)

A. Yes, she steered good, that boat did.

Q. You say that it was about three minutes from the time that you received your first order to port your helm until the collision?

A. Yes, something like that.

Q. Did you know there was going to be a collision before the two vessels came together?

A. Yes, I was prepared for a collision, when I could not get no opening, when we was swinging starboard over and that boat, he was keeping on following us right along, so there was nothing to get out of it.

Q. Did you know there was going to be a collision?
[300—16]

A. Yes, I knew it just before it happened, because everybody could see we could not get out of it then.

Q. What did you do then when you saw there was going to be a collision?

A. I had to stay right with it, that is all, until it struck.

Q. How soon after it struck did you jump out of the pilot-house? A. Yes, I did.

Q. Immediately? A. Yes.

Q. Just as soon as the two vessels came together you got out of the pilot-house? A. Yes.

Q. And the moment that the "Argyll" struck you you were rolled over to starboard, were you not?

A. Yes, she heeled right over, right shortly after it occurred.

Q. Just as soon as she struck you you began to roll? A. Yes.

(Deposition of Fred Carlson.)

Q. Which door of the fire-house did you go out of?

A. I came out on the port side.

Q. As soon as she struck you, how much did she heel you over, how much did she roll you over?

A. She was laying pretty well aflat, pretty near.

Q. Did you get out of the pilot-house before she laid you flat?

A. Yes, I was out; it did not take me long to get out of there.

Q. Just the minute she first touched you you began to get out? A. Yes.

Q. You went out the port side? A. Yes.

Q. Which side of the pilot-house was the compass on, the starboard side?

A. The compass stands right in the center.

Q. How many points had you swung on your port helm between the time that you first put your helm to port and the time you got the order to hard aport?

A. I don't know how much swing there was.

[301—17]

Q. Did you notice?

A. No, I did not notice how much she swung at that time; but all in all it was about four points.

Q. Where were you at the time the "Argyll" backed out? A. Where we were?

Q. Where were you at the time the "Argyll" backed out away from you?

A. I came out from the pilot-house then, just closed the pilot-house door when she backed out.

Q. Which way was your vessel then, how was your vessel lying, on her side?

(Deposition of Fred Carlson.)

A. Well, she was on the way going over then.

Q. Did you stop to close the pilot-house door after you came out?

A. I slammed the door, that is all.

Q. Which one, the port side? A. Yes.

Q. You shut that as you went out? A. Yes.

Q. Your vessel was then rolling over to starboard?

A. Yes.

Q. Did you watch the "Argyll" as she came close to you? A. When she came close to us?

Q. Yes, were you watching her, or watching your boat?

A. No, I did not watch her, I watched ourselves, that is all.

Q. You did not notice her up to the time she struck your boat?

A. No, I did not notice her up until the time she struck.

Q. There was quite a lot of confusion on your boat at the time she struck you, was there not, everybody excited?

A. No, no, we were not excited; there was a little excitement on the boat about them being crippled up.

Q. You did not know *anything being* crippled up until after the collision, did you?

A. No; everybody took it pretty cool and easy.

Q. Who have you discussed this case with; who have you been talking with about this—who have you been talking over [302—18] this case with?

A. I have not been talking about it with anybody, over the case.

(Deposition of Fred Carlson.)

Q. You have talked with your lawyer, haven't you, you have talked with Mr. Lillick about it?

A. Yes.

Q. Talked with Mr. Linderman about it?

A. No, me and Mr. Linderman have not been talking, not talked over it.

Q. Haven't talked with him at all about it?

A. No, Mr. Linderman never asked me any questions about it.

Q. Did you ever talk with Mr. Curtis about it at all? A. No.

Q. Didn't you talk with Mr. Curtis about it after you got in here; after you got to San Francisco the first time didn't you talk with Mr. Curtis about it?

A. No, I have not talked to anybody except this man here, that is all, the only man (pointing to Mr. Lillick).

Q. Did you see the hole that was in the vessel afterwards? A. No, I did not see the hole.

Q. Who told you that there was a 35 foot hole in it?

A. The captain himself, he told me that there was a 35 or 40 foot hole.

Q. When was that?

A. That was a couple of days; I saw him.

Q. You talked with him about this then. You have talked with the captain then about it?

A. No; that is all the captain told me, we did not talk any more about it at all. He said she got a fierce hole in her bow, that is all he told me.

(Deposition of Fred Carlson.)

Q. Didn't you talk about the collision at all with him? A. No.

Mr. WALL.—Q. Carlson, did you have anything to do with [303—19] getting the men out that were hurt up forward?

A. No, we were busy making the other boat ready and we had that boat out already and they were in the boat getting them men out.

Q. But you did not have anything to do with getting the men out?

A. No, that is what I mean.

Q. Were you in the boat that took them away from the ship?

A. No, I was not in the boat either that took them away, the second mate and two more fellows was in the boat, and they took them from the forecastle-head and sent them right over to the oil steamer at the time.

Q. Did you see them when they took them off the "Gualala"; did you see the "Gualala's" boat when she took the men away from the "Gualala"?

A. No, no, I did not have no chance to look after that because we were trying to make the other boat ready.

Q. You did not see anything of that?

A. No, there was no time for seeing and looking after anything like that.

Redirect Examination.

Mr. LILLICK.—Q. Do you know Mr. Curtis, do you know who he is? A. No.

(Deposition of Fred Carlson.)

Q. Do you know whether the "Argyll" was backing at the time the two boats came together, Mr. Carlson?

A. I don't know if she was backing at the time when she struck, I don't know that, but she was backing afterwards.

Q. Did you hear any signals from the "Argyll" at all to indicate she was backing at any time, by whistles?

A. No, not by whistles; but she backed off after the collision was over.

Q. Did you hear three whistles blown on the "Argyll" at any [304—20] time before the collision? A. No.

Q. After the collision and when you were on the "Argyll" coming down here, Mr. Carlson, did you at any time in any conversation that you had with anybody say that the collision would not have happened if the second officer on the "Gualala" had not ordered the helm hard aport?

A. No, I did not hear that.

Q. Did you ever say anything about that at all to anybody? A. No, I have not.

Q. Either to anyone on the "Argyll" or to any one down here after you reached San Francisco?

A. No, I didn't hear no question, nor hear anything about that part ever.

Q. You have testified that you got an order from the officer on the bridge to put your helm to port. Did you get that order after the whistle from the

(Deposition of Fred Carlson.)

“Argyll” answered your whistle from the “Gualala” or before?

A. That was after the whistle was answered.

Q. After the whistle was answered?

A. Yes. [305—21]

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

I, Francis Krull, a United States Commissioner for the Northern District of California, do hereby certify that the reason stated for taking the foregoing deposition is that the testimony of the witness Fred Carlson is material and necessary in the cause in the caption of the said deposition named and that he is bound on a voyage to sea and will be more than one hundred miles from the place of trial at the time of trial.

I further certify that on Saturday, December 14th, 1912, I was attended by Ira S. Lillick, Esq., proctor for the libelant and A. W. Beadle Co., Ira A. Campbell, Esq., proctor for the claimant, and F. R. Wall, Esq., proctor for Konstant Latz, and by the witness, and that the witness was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said cause; that said deposition was, pursuant to the stipulation of the proctors for the respective parties hereto, taken in shorthand by Edward W. Lehner, and afterwards reduced to typewriting, that the reading over and signing of said deposition of the witness was by the aforesaid stipulation expressly waived.

Introduced in connection therewith and referred to and specified therein is Libelant's Exhibit Carlson "A."

I further certify that I have retained the said deposition in my possession for the purpose of delivering the same with my own hand to the United States District [306—22] Court for the Northern District of California, the Court for which the same was taken.

And I further certify that I am not of counsel nor attorney for any of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

IN WITNESS WHEREOF, I have hereunto subscribed my hand at my office in the City and County of San Francisco, State of California, this 3 day of Mch., 1913.

[Seal] FRANCIS KRULL,
United States Commissioner, Northern District of
California, at San Francisco.

[Endorsed]: Filed Mar. 6, 1913. W. B. Maling,
Clerk. By Francis Krull, Deputy Clerk. [307—23]

*In the District Court of the United States in and for
the Northern District of California.*

No. 15,327.

The GUALALA STEAMSHIP COMPANY,
Libelant,
vs.

The Steamship "ARGYLL," Her Engines, Boilers,
etc.,

Respondent.

The UNION STEAMSHIP COMPANY,
Claimant.

BE IT REMEMBERED that on Friday, December 27th, 1912, pursuant to stipulation of counsel hereunto annexed, at the offices of Messrs. Page, McCutchen, Knight & Olney, in the Merchants' Exchange Building, in the City and County of San Francisco, State of California, personally appeared before me, Francis Krull, a United States Commissioner for the Northern District of California, to take acknowledgments of bail and affidavits, etc., Ernest Comstedt, a witness produced on behalf of the libelant.

Ira S. Lillick, Esq., appeared as proctor for the libelant, and A. W. Beadle Co., Ira A. Campbell, Esq., of the firm of Messrs. Page, McCutchen, Knight & Olney, appeared as proctor for the claimant, and F. R. Wall, Esq., appeared as [308—1] proctor for Konstant Latz, and the said witness, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but

the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth.

(It is hereby stipulated and agreed by and between the proctors for the respective parties, that the deposition of Ernest Comstedt may be taken *de bene esse* on behalf of the libelant, at the offices of Messrs. Page, McCutchen, Knight & Olney, in the Merchants Exchange Building, in the City and County of San Francisco, State of California, on Friday, December 27th, 1912, before Francis Krull, a United States Commissioner for the Northern District of California, and in shorthand by Edward W. Lehner.

It is further stipulated that the deposition, when written out, may be read in evidence by either party on the trial of the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of taking said deposition, and that all objections as to materiality and competency of the testimony are reserved to all parties.

It is further stipulated that the reading over of the testimony of the witness and the signing thereof is hereby expressly waived.) [309—2]

[Deposition of Ernest Comstedt, for Libelant.]

ERNEST COMSTEDT, called for the libelant, sworn.

Mr. LILLICK.—Q. What is your name?

A. Ernest Comstedt.

Q. Your age? A. 28.

Q. Where do you live when you are in San Francisco?

(Deposition of Ernest Comstedt.)

A. Most of the time I used to stay down in the Scandinavian Home.

Q. Were you on the "Gualala" when the "Argyll" and the "Gualala" were in collision? A. Yes.

Q. What position did you occupy on the "Gualala," what did you do on the "Gualala"?

A. I was a sailor.

Q. On the night that the collision occurred between the "Argyll" and the "Gualala," what was you doing? A. I was on the lookout.

Q. What time did you go on the lookout that evening? A. At 2 o'clock I went on the lookout.

Q. What was the first that you saw of the "Argyll"?

A. I saw her masthead light and her red light.

Q. About how far away from the "Gualala" was she when you saw the masthead light?

A. About 3 miles.

Q. Did you see the red light at the same time that you saw the masthead light?

A. No, just a little after; I seen her masthead light first; then I seen his red light just a few seconds afterwards.

Q. What did you do after having seen the masthead light?

A. I reported to the second mate, I said, "A light on the port bow."

Q. How far were these lights on the port bow, what bearing were they?

A. About a point and a half on our port bow.

(Deposition of Ernest Comstedt.)

Q. Did you get a reply from the man on the bridge?

A. Yes.

Q. After you reported?

A. Yes, the second mate, he says, "All [310—3] right."

Q. Will you tell in your own words, Mr. Comstedt, what occurred after your having seen the masthead light and then the red light on the "Argyll." Tell us what happened?

A. Well, after I reported her light, we was blowing one whistle, and the "Argyll" she was answering us right off, and I could see her red light when we swung, being swinging to starboard, and she was still coming closer to us, and somehow she couldn't swing clear, she was keeping on swinging with us, and I didn't know what way she was going, she was coming right after us, came right on for us, like.

Q. How long after you reported her to the bridge was it before the whistles were blown upon the boat?

A. About 3 minutes from the time we blowed the whistle until she struck.

Q. How long was it after you saw the masthead light of the "Argyll" till the "Gualala" blew one whistle?

A. How long it was from when I saw her and reported her light—about 5 minutes, I guess.

Q. Have you any recollection how long it was at all?

A. I could not exactly tell you how long, because I didn't have no watch, and took no time exactly, but that is just what I imagine.

(Deposition of Ernest Comstedt.)

Q. Who blew the first whistle?

A. We blowed the first whistle on the "Gualala."

Q. Was there an answer to that whistle?

A. Yes, she answered us right off.

Q. Do you know whether the "Gualala" changed her course after blowing that one whistle?

A. Yes, I could see her after we blowed one whistle, that she was swinging over to starboard. [311—4]

Q. Did you stay on the lookout until the two vessels came together?

A. Yes, I was right on the forecastle head when she struck, and then I commenced to run aft, and there was some other fellows from the forecastle that was before me aft.

Q. Were you watching the "Argyll" during the time from when you first saw her up to the time when the two boats came together?

A. I was not standing watching her before she came close to us, until the last two or three minutes. At first when I reported her I did not look much at her because she was quite a ways off then.

Q. Until the whistle was blown on the "Gualala" did the "Argyll" change her position any as to the bearing she was off your port bow? A. No.

Q. Did you hear any other whistles blown on the "Argyll" except the one whistle in answer to the whistle that was blown on the "Gualala"?

A. No, never heard more than one whistle, one from the "Argyll" and one from us; the one from us was first and then the "Argyll" answered us. That is all the whistles I heard.

(Deposition of Ernest Comstedt.)

Q. Do you know whether any other whistles were blown on the "Argyll"?

A. No whistle was blown except the two whistles, one from each ship.

Cross-examination.

Mr. CAMPBELL.—Q. Where were you standing at the time of the collision?

A. Up on the forecastle-head.

Q. I thought you said you ran aft?

A. Well, when she struck I ran aft.

Q. What lights did you see on the "Argyll"?

A. Her red light and mast light.

Q. That is all? A. Yes. [312—5]

Mr. WALL.—Q. Did you see any green light at any time?

A. No, never noticed any green light at all.

Q. How far away from the "Gualala" was the "Argyll," according to your best judgment, when the "Gualala" blew one whistle?

A. About 3 minutes.

Q. About how far away was she? A. How far?

Q. About how far away from the "Gualala" was the "Argyll" when the "Gualala" blew one whistle?

A. About 2 miles, 2 or 3 miles.

Q. How was the weather?

A. Why, it was not quite clear, a bright night, because it had been foggy a few hours before that; it was clear enough, but not a quite clear night; I won't say it was a clear night, but it was pretty clear weather.

Q. How was it down along on the horizon?

(Deposition of Ernest Comstedt.)

A. Well, kind of like when the fog settles down on the water line.

Q. It was pretty clear up above? A. Yes.

Q. You could see the masthead light of the "Argyll" and it was foggy or hazy below, was it?

A. Well, kind of hazy—not hazy, I won't say that; not quite a clear night, but it was a pretty clear night.

Q. It was not quite clear along the horizon?

A. No, kind of hazy on the water line.

Q. You say you could see the "Gualala" swinging to starboard?

A. I could see her swinging on those lights when we started to swing.

Q. How far did you swing around to starboard as far as you could tell?

A. Well, I don't know; quite a bit all right, four or five points, something like that.

Q. And the "Argyll" was coming toward you all the time?

A. Yes, she was coming like she was coming after us, I could [313—6] not see her swing at all.

Q. You were watching her during that time?

A. Yes.

Q. You could not see her green light at any time?

A. I did not notice her green light at any time.

Q. Did you ever notice her green light at all?

A. No, I never noticed it.

Q. Where did she strike the "Gualala," the "Argyll"?

A. Just on the break of the forecastle-head.

(Deposition of Ernest Comstedt.)

Q. Do you know about what sort of an angle she struck?

A. Well, about right ahead like, pretty near right ahead.

Q. Not right ahead, but pretty near right ahead?

A. Yes.

Q. Did you see the wound she made afterwards—did you see the injury that she did to the “Gualala”?

A. No, I didn’t see that.

Q. Afterwards you didn’t see that? A. No.

Q. What did you do after the collision?

A. Ran aft and gave them a hand to get the life-boats over; I was right alongside of the ship after she struck her.

Q. Did you have anything to do with getting the sailors up out of the bunks that were hurt, the two sailors that were hurt?

A. Me and the second mate, yes, we saved those two fellows.

Q. Did you get them out of their bunks or did you have anything to do with getting them out of their bunks? A. No.

Q. You and the second mate saved two, you mean you took them in the boat?

A. Well, we could not get off them fellows, they stayed forward, and we lowered the boat down, and we picked those fellows out of the water.

Q. You picked them out of the water? A. Yes.

Q. How did they get into the water?

A. Well, the ship was so [314—7] much down

(Deposition of Ernest Comstedt.)

in the water, the water was standing up to here (pointing).

Q. Could you say how much the ship was listing over?

A. Well, first when she was struck, when the deck-load went over on the port side, then she started to list to starboard, and she have, must have, turned over to port afterwards, because I was on the port side after we lowered the lifeboat, and when I came aft then she was laying pretty near straight, because I told the captain, I said, "Will you hold the lifeboat a minute? I want to see if I can get a chance to go forward and get my clothes." He said, "All right," and when I came to the pilot-house she turned over, and I had to jump—I jumped down a guy and I got in the lifeboat.

Q. You say she turned right over? A. Yes.

Q. Which way did she turn over?

A. She turned over to port.

Q. When you went to get the men that you picked up afterwards out of the water, where were the men?

A. They were forward.

Q. They were up forward? A. Yes.

Q. They were up on the forecastle-head, were they?

A. No; mostly the whole side was out, they were standing forward, there was nothing left there; the deck-load was flat; they were standing right in front of the forecastle-head, the two of them; they jumped, one went in the water, and I picked him out of the water; the other fellow jumped in the stem of the boat.

(Deposition of Ernest Comstedt.)

Q. How far was the boat from the ship at the time the other fellow went into the water?

A. A couple of fathoms; he could not reach the boat. [315—8]

Redirect Examination.

Mr. LILLICK.—Q. Will you take those two little models on the desk and put them on that paper in the positions that the two vessels were when they came together, calling the big one the “Argyll” and the little one the “Gualala”? A. Yes.

Q. Put them on the paper the way they were when they came together, when the two were right together, touching.

A. Well, here we was coming swinging this way, and she was going like that.

Q. How were they when they came together?

A. Just like that, by the forecastle-head.

Mr. LILLICK.—We offer that in evidence as Libelant’s Exhibit, Comstedt No. 1.

(The paper is marked “Libelant’s Exhibit, Comstedt No. 1.”)

Q. Did you notice whether the “Argyll” had come to a stop before they came together?

A. No, I did not notice that she was to any stop; before she commenced to back out of the hole she did.

Q. I am talking about the time when the two vessels came together, was the “Argyll” still coming ahead when they came together? A. Yes.

Q. How about the “Gualala,” had she stopped by the time they had come together or was she going ahead too?

(Deposition of Ernest Comstedt.)

A. Well, we was going ahead for all I could see; I don't know that the engines was stopped, because that is more than I could hear, like on any big steamer, you can't hear on the forecastle-head, because they are shaking so much. [316—9]

Recross-examination.

Mr. CAMPBELL.—Q. Are you sure that they came together in that position, or were they more head-on—were they not practically head-on when they came together?

A. Well, that is just about the best position I could give.

Q. Your recollection isn't very clear about it; you don't remember very clearly about it?

A. Well, I remember all right, that is the way as I saw it when they came together.

Q. Did the "Argyll" slide along you at all?

A. No.

Mr. LILLICK.—Q. Did she after cutting into you go along down?

A. Well, she went right in; she did not slide anything along, she went straight in. [317—10]

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

I, Francis Krull, a United States Commissioner for the Northern District of California, do hereby certify that the reason stated for taking the foregoing deposition is that the testimony of the witness Ernest Comstedt is material and necessary in the cause in the caption of the said deposition named

and that he is bound on a voyage to sea and will be more than one hundred miles from the place of trial at the time of trial.

I further certify that on Friday, December 27th, 1912, I was attended by Ira S. Lillick, Esq., proctor for the libelant, and A. W. Beadle Co., Ira A. Campbell, proctor for the claimant, and F. R. Wall, proctor for Konstant Latz, and by the witness, and that the witness was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said cause; that said deposition was, pursuant to the stipulation of the proctors for the respective parties hereto, taken in shorthand by Edward W. Lehner, and afterwards reduced to type-writing; that the reading over and signing of said deposition of the witness was by the aforesaid stipulation expressly waived.

Introduced in connection therewith and referred to and specified therein is "Libelant's Exhibit, Comstedt No. 1."

I further certify that I have retained the said deposition in my possession for the purpose of delivering the same with [318—11] my own hand to the United States District Court for the Northern District of California, the Court for which the same was taken.

And I further certify that I am not of counsel nor attorney for any of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

IN WITNESS WHEREOF, I have hereunto subscribed my hand at my office in the City and County

of San Francisco, State of California, this 3rd day of Mch., 1913.

[Seal]

FRANCIS KRULL,
United States Commissioner, Northern District of
California, at San Francisco.

[Endorsed]: Filed Mar. 6, 1913. W. B. Maling,
Clerk. By Francis Krull, Deputy Clerk. [319—12]

**Opinion and Order for Entry of Decree in Favor of
Libelant, etc.**

*In the District Court of the United States, in and for
the Northern District of California, First Divi-
sion.*

IN ADMIRALTY—No. 15,327.

GUALALA STEAMSHIP COMPANY, a Corpora-
tion.

Libelant,

vs.

The Steamer "ARGYLE," Her Engines, Boilers,
etc.,

Respondent.

THE UNION STEAMSHIP COMPANY, a Cor-
poration,

Claimant.

No. 15,329.

A. W. BEADLE,

Libelant,

vs.

The Steamer "ARGYLE," etc.,

Respondent.

THE UNION STEAMSHIP COMPANY, a Corporation,

Claimant.

No. 15,335.

KONSTANT LATZ,

Libelant,

vs.

The American Steamship "ARGYLE," and the
GUALALA STEAMSHIP COMPANY, a
Corporation,

Respondent.

THE UNION STEAMSHIP COMPANY, a Corporation,

Claimant. [320]

No. 15,458.

ASLAK ABRAHAMSEN,

Libelant,

vs.

The American Steamship "ARGYLE," and the
GUALALA STEAMSHIP COMPANY, a
Corporation,

Respondent.

THE UNION STEAMSHIP COMPANY, a Corporation,

Claimant.

IRA S. LILLICK, Esq., Proctor for Gualala Steamship Company, a Corporation, and A. W. Beadle, Libelants.

F. R. WALL, Esq., Proctor for Konstant Latz, Libelant.

S. T. HOGEVOLL, Esq., Proctor for Aslak Abrahamsen, Libelant.

IRA A. CAMPBELL, Esq., McCUTCHEN, OLNEY & WILLARD, Proctors for Claimant.

These cases arise out of an accident in which two vessels propelled by steam, under full control and having the whole Pacific Ocean in which to maneuver, collided on a clear night, when the lights of each were easily discernible to the other while they were yet miles apart. As is usual in such cases, with each vessel endeavoring to throw the blame upon the other, the testimony is quite voluminous and very conflicting, and I cannot find the requisite time to review it in this decision. From established facts, however, I am of the opinion that the "Argyle" must [321] be held responsible for the collision for the following reasons:

I. For inefficiency of the lookout in not reporting when the "Gualala's" red light and her green light were visible at the same time, and in not reporting when he lost her green light and picked up her red light alone.

II. For negligence on the part of McAlpine, the deck officer, in not observing the "Gualala's" course because of his failure to note when her red light and her green light were visible together, and when her

green light disappeared from view; because of his failure to observe her red light until warned by her whistle; and because of the fact that when the "Gualala's" lights were first sighted he contented himself with directing the quartermaster "not to let her come any closer," apparently paying no further attention to her until warned by her whistle when it was too late to avoid a collision.

The log of the chief officer of the "Argyle" shows that seven minutes elapsed from the time the lookout reported the "Gualala's" light until the blowing of her whistle. At what period of this interval it should have been apparent to the navigator of the "Argyle" that the "Gualala" was on a crossing course upon the "Argyle's" starboard side cannot now be determined, but it is clear that it should have been known to him earlier than it was, and at least at the time when both lights were visible to the lookout, and not reported, and at a time when, if McAlpine were watching, he would have seen both lights together, the green light disappear, and the red alone remain in [322] view. Had these things been observed, earlier precautions could have been taken by the "Argyle" to avoid the collision, which McAlpine declares was inevitable when the warning whistle of the "Gualala" called his attention to her course and proximity. Much expert testimony was introduced to show that the collision could not have occurred in the manner testified to by Gibbs, but the value of this testimony depends upon the accuracy of estimates of time, courses and distances. Such estimates are of necessity more or less uncertain.

With a full appreciation of the seriousness of my conclusion to the "Argyle," I am nevertheless convinced that had the lookout and the deck officer on that vessel been as attentive to their duties as the occasion required the collision could not have occurred.

A decree will be entered accordingly establishing the liability of the "Argyle," and referring the cause to the Commissioner to ascertain and report the damage suffered by libelants A. W. Beadle and Gualala Steamship Company. As to libelant Aslak Abrahamsen, a decree will be entered awarding him damages in the sum of \$3,621.00. As to libelant Konstant Latz, a decree will be entered awarding him damages in the sum of \$3,500.00.

Each libelant will recover costs.

May 6th, 1914.

M. T. DOOLING,
Judge.

[Endorsed]: Filed May 6, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [323]

At a stated term of the District Court of the United States of America in and for the Northern District of California, First Division, in Admiralty, held at the United States Postoffice and Courts Building, in the City of San Francisco, State of California, on the 8 day of May, 1914.
PRESENT: The Hon. M. T. DOOLING, District Judge.

No. 15,335.

KONSTANT LATZ,

Libelant,

vs.

The Am. Steamship "ARGYLE," etc., and THE
GUALALA STEAMSHIP COMPANY, a
Corporation,

Libelees.

Final Decree.

This cause having been brought on regularly for hearing upon the pleadings and proof, and the advocates of the respective parties having been heard, and the Court having deliberated upon and considered all and singular the premises therein, the Court now finds that the injuries received by said libelant Konstant Latz and the loss of personal effects belonging to said Latz, as in his libel herein alleged, were caused solely by the negligence of said steamship "Argyle" as in said libel alleged, and the damages sustained by said libelant because thereof is the sum of thirty-five hundred dollars (\$3500.00). Now, therefore,—

It is ORDERED, ADJUDGED and DECREED that there is due to said libelant Konstant Latz as damages herein because of said injuries and the loss of said personal effects the sum of \$3,500 and interest on said sum from the date of this decree until the same be satisfied at the rate of seven per centum per annum, and his costs [324] to be taxed, and that the same is a lien upon said steamship "Argyle," her boilers, engines, tackle, apparel and other fur-

niture; that the claimant Union Steamship Company, a corporation, pay to said libelant the sum of \$3,500.00 and interest and costs, as aforesaid; and it further appearing to the Court that said steamship "Argyle" has been released to said claimants upon a stipulation for value with said Union Steamship Company as principal and National Surety Company as surety, it is further ordered that said claimant and said National Surety Company, or either thereof, pay to said libelant said sum of \$3,500 with interest thereon and costs, as aforesaid, within fourteen days from the date of this decree, and that in default thereof execution be and the same is hereby awarded against them and against each thereof, their goods, chattels, lands and tenements or other real estate.

It is further ordered that the libel herein as to the Gualala Steamship Company, a corporation, be, and the same hereby is, dismissed.

M. T. DOOLING,
District Judge.

[Endorsed]: Filed, entered May 8, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.
[325]

*In the District Court of the United States, for the
Northern District of California, First Division.*

IN ADMIRALTY—No. 15,335.

KONSTANT LATZ,

Libelant,

vs.

The American Steamship "ARGYLL," etc., and
THE GUALALA STEAMSHIP COM-
PANY, a Corporation,

Libelees.

UNION STEAMSHIP COMPANY,

Claimant.

Notice of Appeal.

To the Clerk of the Above-entitled Court, and to the
Libelant, and to F. R. Wall, His Proctor:

YOU AND EACH OF YOU WILL HEREBY
PLEASE TAKE NOTICE that the Union Steam-
ship Company, a corporation, claimant and respond-
ent herein, hereby appeals from the final decree
made and entered herein in this cause on the 8th day
of May, 1914, to the next United States Circuit
Court of Appeals for the Ninth Circuit to be holden
in and for said circuit at the City and County of San
Francisco, State of California.

Dated: July 3d, 1914.

IRA A. CAMPBELL,

McCUTCHEN, OLNEY & WILLARD,

Proctors for Respondent and Claimant. [326]

Service of the within Notice of Appeal and receipt

of a copy is hereby admitted this 3d day of July, 1914.

F. R. WALL,
Proctor for Libellant.

[Endorsed]: Filed Jul. 3, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [327]

*In the District Court of the United States, for the
Northern District of California, First Division.*

IN ADMIRALTY—No. 15,335.

KONSTANT LATZ,

Libellant,

vs.

The American Steamship "ARGYLL," etc., and
THE GUALALA STEAMSHIP COM-
PANY, a Corporation,

Libelees.

UNION STEAMSHIP COMPANY,

Claimant and Respondent.

Assignment of Errors.

Now, comes Union Steamship Company, claimant and appellant herein, and says that in the record, opinion, decision and final decree in said cause there is manifest and material error, and said appellant now makes, files and presents the following assignment of errors, on which it relies, to wit:

1. That the District Court erred in rendering the decree herein of date the 8th day of May, 1914, against the Steamship "Argyll."

2. That the District Court erred in holding and

deciding that the said Steamship "Argyll" was in any way at fault in the collision with the steamship "Gualala."

3. That the District Court erred in holding and deciding that the said steamship "Argyll" was in fault for inefficiency [328] of the lookout in not reporting when the "Gualala's" red light and her green light were visible at the same time, and in not reporting when he lost her green light and picked up her red light alone.

4. That the District Court erred in holding and deciding that the said steamship "Argyll" was in fault because of negligence on the part of McAlpine, the deck officer, in not observing the "Gualala's" course, because of his failure to note when her red light and her green light were visible together and when her green light disappeared from view.

5. That the District Court erred in holding and deciding that the said steamship "Argyll" was in fault because of McAlpine's failure in observing the "Gualala's" red light until warned by her whistle.

6. That the District Court erred in holding and deciding that the said steamship "Argyll" was in fault because of the fact that when the "Gualala's" light was first sighted, McAlpine contented himself with directing the quartermaster not to let her come any closer.

7. That the District Court erred in holding that seven minutes elapsed from the time the lookout reported the "Gualala's" light until the blowing of her whistle.

8. That the District Court erred in holding and deciding that the lookout and deck officer of said steamship "Argyll" were inattentive to their duties.

9. That the District Court erred in allowing libelant excessive damages.

10. That the District Court erred in not holding the steamship "Gualala" solely in fault for the collision between it and the said steamship "Argyll."
[329]

In order that the foregoing assignment of errors may be and appear of record, said appellant files and presents the same and prays that such disposition be made thereof as is in accordance with the law and the statutes of the United States in such cases made and provided, and said appellant prays a reversal of the decree herein heretofore made and entered in the above cause and appealed from.

Dated: September 2, 1914.

IRA A. CAMPBELL,

McCUTCHEN, OLNEY & WILLARD,

Proctors for Claimant and Appellant.

Receipt of a copy of the within assignment of errors is hereby admitted this 2d day of September, 1914.

F. R. WALL,

Proctor for Libelant.

[Endorsed]: Filed Sep. 2, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [330]

*In the District Court of the United States, for the
Northern District of California, First Division.*

IN ADMIRALTY—No. 15,335.

KONSTANT LATZ,

Libelant,

vs.

The American Steamship "ARGYLL," etc., and
the GUALALA STEAMSHIP COMPANY, a
Corporation,

Libelees.

UNION STEAMSHIP COMPANY,

Claimant and Respondent.

Bond on Appeal and Staying Execution.

KNOW ALL MEN BY THESE PRESENTS:

That we, the Union Steamship Company, a corporation, owner and claimant of the S. S. "Argyll," her tackle, etc., as principal, and National Surety Company, a corporation organized and existing under and by virtue of the laws of the State of New York, and having its home office at New York City, and lawfully doing business in the State of California, as surety are held and firmly bound unto Konstant Latz, libelant in the above-entitled cause in the sum of Two Hundred and Fifty (250) Dollars, and in the further sum of Four Thousand (4000) Dollars, [331] to be paid to said libelant, his successors or assigns, for the payment of which sums, and each of them, well and truly to be made, we bind ourselves, and each of us, and our respective successors, jointly and severally, by these presents.

SEALED WITH OUR SEAL and dated this 2d day of July, 1914.

WHEREAS, the American S. S. "Argyll," her tackle etc., by the Union Steamship Company, owner and claimant of said vessel, and the Union Steamship Company, claimant and respondent in said cause, have appealed to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the decree of the United States District Court for the Northern District of California, made and entered in said cause on the 8th day of May, 1914, against said respondent steamship "Argyll," her tackle, apparel and furniture, etc., and said claimant, for the principal sum of Thirty-five Hundred (3500) Dollars and Thirty-seven (37) Dollars costs; and

WHEREAS, said Union Steamship Company, owner and claimant, as aforesaid, desire, during the progress of said appeal to stay the execution of said decree of said District Court;

NOW, THEREFORE, the condition of the above obligation is such that if the above-named claimant and respondent, the Union Steamship Company, shall prosecute said appeal to effect and pay all costs, if said appeal is not sustained, and shall abide by and perform whatever decree may be rendered by the United States Circuit Court of Appeals for the Ninth Circuit in said cause, or on the mandate of [332] said United States Circuit Court of Appeals by said District Court below, then this obligation shall be void; otherwise the same shall be and

remain in full force and effect.

UNION STEAMSHIP COMPANY,

[Seal] By W. A. STEWART, President,
Principal.

NATIONAL SURETY COMPANY,

[Seal] By CHAS. SEYLER, Jr.,
Attorney in Fact,
Surety.

The foregoing bond is hereby approved as to form and amount and sufficiency of surety.

F. R. WALL,

Proctor for Libellant.

The foregoing cost and supersedeas bond is hereby allowed and approved this 6th day of July, 1914, and the same may operate as a stay of execution in said cause pending the determination of said appeal.

M. T. DOOLING,

District Judge. [333]

**Affidavit and Acknowledgment by Surety
Company.**

State of California,

County of Los Angeles,—ss.

On this 2d day of July, A. D. 1914, before me personally came Chas. Seyler, Jr., known to me to be the attorney in fact of the National Surety Company, the corporation described in and which executed the within Bond as a surety thereon, and who, being duly sworn, did depose and say that he signed his name thereto by order and authority of the Board of Directors of said company, and that he affixed its Corporate Seal thereto by like order and authority.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, the day and year first above written.

[Seal]

HAZEL JONES,

Notary Public in and for Los Angeles County.

[Endorsed]: Filed Jul. 6, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [334]

*In the District Court of the United States, for the
Northern District of California, First Division.*

IN ADMIRALTY—No. 15,335.

KONSTANT LATZ,

Libelant,

vs.

The American Steamship "ARGYLL," etc., and
the GUALALA STEAMSHIP COMPANY, a
Corporation,

Libelees.

UNION SEAMSHIP COMPANY,

Claimant and Respondent.

**Stipulation and Order as to Testimony, etc.,
Adduced at Hearings in Consolidated Causes.**

IT IS HEREBY STIPULATED AND AGREED that all testimony and other proofs adduced, including the testimony taken at the trial, all depositions taken and admitted in evidence, and all exhibits introduced in any of the causes consolidated for trial with the above-entitled cause, or with which said cause was consolidated, may be considered for all

purposes as having been heard and considered in this cause, including the purpose of hearing and decision of this cause on appeal, and that said cause may be consolidated in the United States Circuit Court of Appeals with any of the causes with which it was [335] consolidated in the above-entitled court.

Dated: August 29th, 1914.

F. R. WALL,

Proctor for Libelant,

IRA A. CAMPBELL,

McCUTCHEN, OLNEY & WILLARD,

Proctors for Claimant and Respondent.

It is so ordered by the Court.

Dated: August 31st, 1914.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Aug. 31, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [336]

*In the District Court of the United States, for the
Northern District of California, First Division.*

IN ADMIRALTY—No. 15,335.

KONSTANT LATZ,

Libelant,

vs.

The American Steamship "ARGYLE," etc., and
the GUALALA STEAMSHIP COMPANY, a
Corporation,

Libelees.

UNION STEAMSHIP COMPANY,

Claimant and Respondent.

**Stipulation and Order as to Original Exhibits to be
Used in Appeal Herein.**

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto that all of the exhibits introduced in the depositions taken before the commissioner in the above-entitled cause, or in any of the causes with which said cause was consolidated, and all exhibits introduced at the hearing before the above-entitled court may be sent up to the United States Circuit Court of Appeals for the Ninth Circuit as original exhibits for the Apostles on appeal.

Dated: September 2, 1914.

F. R. WALL,

Proctors for Libellant.

IRA A. CAMPBELL,

McCUTCHEN, OLNEY & WILLARD,

Proctors for Claimant.

It is so ordered by the Court.

Dated: Sept. 2d, 1914.

M. T. DOOLING,

Judge. [337]

[Endorsed]: Filed Sep. 2, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [338]

*In the District Court of the United States, for the
Northern District of California, First Division.*

IN ADMIRALTY—No. 15,335.

KONSTANT LATZ,

Libelant,

vs.

The American Steamship "ARGYLL," etc., and the
GUALALA STEAMSHIP COMPANY, a
Corporation,

Libelees.

UNION STEAMSHIP COMPANY,

Claimant and Respondent.

**Stipulation and Order Extending Time to File
Apostles on Appeal.**

IT IS HEREBY STIPULATED AND
AGREED, that the time for printing the record
and filing and docketing this cause on appeal in the
United States Circuit Court of Appeals for the Ninth
Circuit may be extended to and including the 31st
day of August, 1914.

Dated: July 30th, 1914.

F. R. WALL,

Proctor for Libelant.

IRA A. CAMPBELL,

McCUTCHEN, OLNEY & WILLARD,

Proctors for Claimant and Respondent.

It is so ordered.

WM. C. VAN FLEET,

Judge. [339]

Pursuant to the foregoing stipulation, it is hereby ordered that the time for printing the record and docketing this cause on appeal in the United States Circuit Court of Appeals for the Ninth Circuit be and the same is hereby enlarged and extended to and including the 31st day of August, 1914.

Dated: July —, 1914.

District Judge.

[Endorsed]: Filed Jul. 31, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [340]

*In the District Court of the United States, for the
Northern District of California, First Division.*

IN ADMIRALTY—No. 15,335.

KONSTANT LATZ,

Libelant,

vs.

The American Steamship "ARGYLL," etc., and the
GUALALA STEAMSHIP COMPANY, a
Corporation,

Libelees.

UNION STEAMSHIP COMPANY,

Claimant and Respondent.

**Stipulation and Order Extending Time to File
Apostles on Appeal.**

IT IS HEREBY STIPULATED AND AGREED
that the time for printing the record and filing and
docketing this cause on appeal in the United States
Circuit Court of Appeals for the Ninth Circuit may

be extended to and including the 4th day of September, A. D. 1914.

Dated: San Francisco, Cal., August 29th, 1914.

F. R. WALL,

Proctor for Libellant.

IRA A. CAMPBELL,

McCUTCHEN, OLNEY & WILLARD,

Proctors for Claimant and Respondent. [341]

Pursuant to the foregoing stipulation, it is hereby ordered that the time for printing the record and docketing this cause on appeal in the United States Circuit Court of Appeals for the Ninth Circuit be and the same is hereby enlarged and extended to and including the 4th day of September, 1914.

Dated: San Francisco, Cal., August 31st, 1914.

M. T. DOOLING,

District Judge.

[Endorsed]: Filed Aug. 31, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [342]

**Certificate of Clerk U. S. District Court to Apostles
on Appeal.**

I, Walter B. Maling, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and hereunto annexed 342 pages, numbered from 1 to 342, inclusive, with the accompanying exhibits, 19 in number (transmitted separately in their original form), contain a full, true and correct transcript of the records and proceedings as the same now remain on file and of record in the Clerk's Office of said Dis-

trict Court, in the cause entitled Konstant Latz, Libellant, vs. The American Steamship "Argyle," etc., and Gualala Steamship Co., a corp., Libelees, number 15,335, and which said Apostles on Appeal are made up pursuant to and in accordance with Section One, of Rule 4, in Admiralty, of the Rules of the United States Circuit Court of Appeals, for the Ninth Circuit, as well as "Praecipe for Apostles on Appeal" and "Amended Praecipe for Apostles on Appeal" (copies of which are embodied herein), and the instructions of proctors for claimant and appellant herein.

I further certify that the costs of preparing and certifying the foregoing Apostles on Appeal is the sum of One Hundred Seventy-four Dollars and Eighty Cents (\$174.80), and that the same has been paid to me by the proctors for appellant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 3d day of September, A. D. 1914.

[Seal]

WALTER B. MALING,

Clerk.

By C. W. Calbreath,

Deputy Clerk. [343]

[Endorsed]: No. 2473. United States Circuit Court of Appeals for the Ninth Circuit. Union Steamship Company, a Corporation, Claimant of the American Steamship "Argyll," Her Engines, Boilers, etc., Appellant, vs. Konstant Latz, Appellee. Apostles. Upon Appeal from the United States District Court for the Northern District of California, First Division.

Received and filed September 4, 1914.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

No. 2473

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

UNION STEAMSHIP COMPANY (a corporation), claimant of the American Steamship
"Argyll", her engines, boilers, etc.,

Appellant,

vs.

KONSTANT LATZ,

Appellee.

BRIEF FOR APPELLANT.

EDWARD J. McCUTCHEN,

IRA A. CAMPBELL,

McCUTCHEN, OLNEY & WILLARD,

Proctors for Appellant.

Filed this day of November, 1914.

NOV 2 - 1914

FRANK D. MONCKTON, Clerk

F. D. Monckton,

Clerk.

By Deputy Clerk.

No. 2473

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

UNION STEAMSHIP COMPANY (a corporation), claimant of the American Steamship "Argyll", her engines, boilers, etc.,

Appellant,

vs.

KONSTANT LATZ,

Appellee.

BRIEF FOR APPELLANT.

Statement of Facts.

This appeal requires the determination of the faults which brought about a collision between the oil tanker "Argyll" and the steam schooner "Gualala." The collision occurred, on a clear night, at about three A. M. of October 15th, 1912, between Point Reyes and Point Arena, on the coast of California, while the "Argyll", a steamship 320 feet in length, loaded with gasoline, was steaming northward, steering N. W. $\frac{1}{4}$ W. and the "Gualala", a steam schooner 120 feet long, loaded with ties and tan bark, was proceeding southward, steer-

ing S. E. The vessels came together about 30° from head on, the "Argyll" striking the "Gualala" on the latter's port bow, approximately eleven feet abaft her stem.

The two versions of the primary cause of collision, given by the officers and crews of the two vessels, were diametrically opposed to each other. In brief, that of the "Gualala's" witnesses was that while she was proceeding on a S. E. course, her first officer, Gibbs, in charge of her navigation, saw the range lights of the "Argyll" about one and one-half miles ahead, bearing approximately one and one-half points on the "Gualala's" port bow; that he next saw the "Argyll's" port (red) side light, and, thereupon, blew a one blast passing whistle, which he says was answered by the "Argyll", and ordered the "Gualala's" helm a'port; that she swung off one and one-half points to S. E. by S. $\frac{1}{2}$ S.; that half a minute later he ordered the helm hard a'port, and then in 25 or 30 seconds, when the "Gualala" was heading S. S. W., he reversed full speed astern, and the collision occurred a minute afterward. The reversing of the engine when the "Gualala" was heading S. S. W. is stated by Gibbs to have been induced by the fact that the "Argyll's" green light suddenly, at that moment, came in view, two points on the "Gualala's" port bow, indicating that the "Argyll" was attempting to cross the course of the "Gualala", contrary to the exchanged passing signals. These changes of courses were plotted by Gibbs as libelant's Exhibit "A", a copy of which, reduced in size, has been appended to this brief for convenient reference.

The original exhibit has been transmitted to the clerk of this court.

On the part of the "Argyll", it is contended by her witnesses that the "Gualala's" range lights were first observed about one and one-half points on the "Argyll's" starboard bow, and that immediately thereafter the former's green light was seen, the green lights and not the red lights thus being exposed to each other; that, shortly afterward, the "Gualala" blew a one blast passing signal, ported her helm, and turned across the course of the "Argyll", exposing to the latter both of her side lights, then shutting out her green light, and leaving her red light alone; that, thereupon, in an effort to swing her clear of the "Gualala", the "Argyll's" helm was put hard a'port, the alteration of helm being denoted by a one blast passing signal, and her engines were instantly reversed full speed astern, such reversing being indicated by three blasts on the "Argyll's" whistle; that instead of swinging clear, however, the vessels came together at the angle stated.

It is thus certain that one version, or the other, of the collision is wrong. It is manifest that the two vessels could not approach each other starboard to starboard so as to expose green light to green light, as stated by the "Argyll's" witnesses, and be at the same time port to port so as to show red light to red light, as insisted by the "Gualala's" officers and crew.

It is equally positive that the "Argyll" could not turn to starboard under a port helm, as asserted by

her officers and crew, in compliance with her answer of one blast to the one blast passing signal given by the "Gualala", and at the same time turn to port under a starboard helm, in direct opposition to the passing whistles, as claimed by the "Gualala's" witnesses. Either, therefore, the vessels approached starboard to starboard, and each ported, in accordance with the exchanged passing signals, as stated by the "Argyll's" officers and crew, or they were port to port, and the "Gualala" ported as required by the passing signal, and the "Argyll" starboarded in violation of it, as contended by the "Gualala's" witnesses. *The determination of these controverted facts will fix the fault for the collision.*

The evidence in the cause was taken in open court, save that of the officer and crew of the "Gualala", in charge of her navigation, whose testimony, except that of the master not produced as a witness, was procured by deposition. Following the trial, the District Court rendered its decision, holding the "Argyll" solely at fault for negligence on the part of her lookout in not reporting the change of course by the "Gualala", and of the deck officer in not observing such alteration of course. The opinion, however, does not adjudge such changes by the test of proper navigation. It was in briefest form, and did not purport to review the navigation of the two vessels leading to the collision, save as to the want of diligence charged to the "Argyll's" lookout and deck officer. In fixing fault upon the "Argyll", however, the court impliedly found, though it did not so state, that the version of the

collision given by her officers and crew, was the true one, a fact which of itself necessitated the condemnation of the "Gualala" under two leading cases, one in the Federal Courts of the United States, and the other in the English Court of Appeal and the House of Lords. Notwithstanding the court had these authorities before it, no mention was made of the rule promulgated by them, and no effort was exerted to distinguish their application, or to show any reason why the "Gualala" did not merit condemnation for doing that which they held to be improper navigation. The result is that a complete review of the navigation of the two vessels is necessary to a full understanding of the cause of the collision.

This appeal is prosecuted from the decrees entered on the District Court's decision.

Specifications of Error.

Errors have been assigned, in the apostles on appeal, to the decree of the District Court, holding the "Argyll" solely at fault for the collision, as follows:

1. That the District Court erred in rendering the decree herein of date the 8th day of May, 1914, against the steamship "Argyll".
2. That the District Court erred in holding and deciding that the said steamship "Argyll" was in any way at fault in the collision with the steamship "Gualala".

3. That the District Court erred in holding and deciding that the steamship "Argyll" was in fault for inefficiency of the lookout in not reporting when the "Gualala's" red light and her green light were visible at the same time, and in not reporting when he lost her green light and picked up her red light alone.

4. That the District Court erred in holding and deciding that the steamship "Argyll" was in fault because of negligence on the part of McAlpine, the deck officer, in not observing the "Gualala's" course, because of his failure to note when her red light and her green light were visible together and when her green light disappeared from view.

5. That the District Court erred in holding and deciding that the said steamship "Argyll" was in fault because of McAlpine's failure in observing the "Gualala's" red light until warned by her whistle.

6. That the District Court erred in holding and deciding that the steamship "Argyll" was in fault because of the fact that when the "Gualala's" light was first sighted, McAlpine contented himself with directing the quartermaster not to let her come any closer.

7. That the District Court erred in holding that seven minutes elapsed from the time the lookout reported the "Gualala's" light until the blowing of her whistle.

8. That the District Court erred in holding and deciding that the lookout and deck officer of said steamship "Argyll" were inattentive to their duties.

9. That the District Court erred in allowing libellant excessive damages.

10. That the District Court erred in not holding the steamship "Gualala" solely in fault for the collision between it and the said steamship "Argyll".

Inasmuch as the errors assigned present for determination *de novo*, the question of the proper navigation of both vessels, such navigation can best be considered in its causative relations to the collision.

Argument.

Three facts, material to the determination of the primary cause of the collision, are admitted:

1. That the "Gualala" blew a one blast passing whistle, and altered her course to starboard in accordance therewith.

2. That immediately thereafter the "Argyll" blew a similar whistle.

3. That the vessels came together about 30° from head on, at a time when the "Gualala" was heading S. S. W.

If the "Gualala" was on a S. E. course to starboard of the "Argyll", showing her green light to the latter when she blew the one blast passing whistle, then in altering her course to starboard in accordance with the signal, she committed fault in attempting to cross the bow of the "Argyll", and must be condemned under the high authorities hereafter cited.

On the other hand, if the vessels were port to port, exposing their red lights to each other, when the "Gualala" gave the passing signal and ported her helm, then the "Argyll" must have starboarded her helm instead of porting it, as the passing signals required, and she should be held in fault for attempting to cross the course of the "Gualala." *Stripped of its unessentials, then, the case turns upon the question of the positions of the two vessels when the passing signals were given, and the direction in which the "Argyll" altered her course, for the ascertainment of those facts determines the vessel which committed the fateful error of attempting to cross the course of the other.*

Certain it is that the vessels came together at about 30° from head on when the "Gualala" was heading approximately S. S. W. *If, therefore, it can be demonstrated that the collision could not have so occurred if the two vessels were approaching port to port, red light to red light, by the "Gualala" porting her helm, and the "Argyll" starboarding hers, as the "Gualala's" witnesses claim, but could naturally have so resulted if they were starboard to starboard, green light to green light, and each ported in accordance with the exchanged signals, then no alternative exists to the court finding that the "Gualala" committed the primary fault by wrongfully attempting to cross the course of the "Argyll" when the vessels could and should have passed clear, as they were going, starboard to starboard. Indeed, such fact of course and change of course seems to have been found by the trial court,*

but the latter failed to appreciate the legal fault which it involved, although it had been pointed out by at least two leading cases.

The Manitoba, F. C. 9029; 122 U. S. 154;

Stoomvaart, etc., v. P. & O. St. Nav. Co., L. R.
5 A. C. 876.

The District Court found that the "Argyll" must be held responsible for the collision for the following reasons:

"1. For inefficiency of the lookout in not reporting when the 'Gualala's' red light and her green light were visible at the same time, and in not reporting when he lost her green light and picked up her red light alone.

2. For negligence on the part of McAlpine, the deck officer, in not observing the 'Gualala's' course because of his failure to note when her red light and her green light were visible together, and when her green light disappeared from view; because of his failure to observe her red light until warned by her whistle; because of the fact that when the 'Gualala's' lights were first sighted, he contented himself with directing the quartermaster 'not to let her come any closer,' apparently paying no further attention to her until warned by her whistle when it was too late to avoid a collision."

When the vessels came in view of each other's side lights, either the "Argyll" was on the "Gualala's" port bow, showing her red light to the latter, as claimed by the officers and crew of the "Gualala", or the "Gualala" was off the starboard bow of the "Argyll", exposing her green lights, as contended by the "Argyll's" witnesses. No other positions are even suggested by those who were witnesses to the collision.

It is also certain that the "Gualala", upon blowing her one blast passing signal, ported her helm and swung to starboard. If, therefore, in so swinging, she opened both green and red lights to the lookout and deck officer of the "Argyll", and then shut out the green light and left her red light alone visible, as stated by the court, the "Gualala" must have been to starboard of the "Argyll"; for if she had been to port of the latter, so that the "Argyll's" red light was visible to the "Gualala" at about one and one-half points on the latter's port bow, *then, by her swinging to starboard under her ported helm, the "Gualala" would never have opened both lights to, and immediately afterward shut her green light out from, the "Argyll"*. It would be simply a physical impossibility. When the trial court, then, found that "inefficiency" existed on the part of the lookout of the "Argyll" in not reporting when the "Gualala's" red light and green light were visible, and when he lost her green light and picked up her red light alone, *the court must have found, in his own mind, that the "Gualala" was approaching on the "Argyll's" starboard bow, as stated by the "Argyll's" witnesses, and not to port, as contended by the officers and crew of the "Gualala"*. The same conclusion necessarily follows from the court's finding of negligence on the part of the "Argyll's" deck officer, in not observing the "Gualala's" change of course, and in not noting when her red light and her green light disappeared from view. *Those conditions simply could not be produced by a change of the "Gualala's" course to starboard, by a porting of*

her helm, if she had the "Argyll's" red light on her own port bow.

The finding of the defined "inefficiency" and "negligence" on the part of the officers and crew of the "Argyll", by the trial court, necessitated, therefore, a corresponding finding that the "Gualala", when on a course which would have passed the "Argyll" starboard to starboard, ported *her helm and attempted to cross the bow of the "Argyll", thereby precipitating the collision.*

Not only does the finding of the District Court force this conclusion, but the evidence adduced by the witnesses called on behalf of both vessels demonstrates it beyond peradventure as the only possible explanation of the collision. It is necessary, therefore, to a proper determination of the fault responsible for the collision, that all of the evidence be given due consideration, with careful reference to the illustrative drawings of the courses of the vessels, made by the witnesses, copies of which, proportionately reduced in size, are appended hereto.

GIBBS' STATEMENT AS TO THE COURSE OF THE "GUALALA."

The testimony of First Officer Gibbs of the "Gualala", who was in charge of her navigation, was that while the "Gualala" was proceeding at the rate of eight miles per hour, down the California coast, between Point Arena and Point Reyes, on a S. E. course (Ap. 280-282), he saw the range lights of the "Argyll"

about a mile and a half, or a mile and three-quarters, ahead, bearing about a point and a half on the "Gualala's" port bow (Ap. 261-2, 28), and, that thereupon, he blew one whistle (Ap. 288-9), and ordered his quartermaster to port his helm, which order was obeyed by changing the course to starboard, about one and a half points (Ap. 262, 286, 297). This was about three minutes before the collision (Ap. 287). That half a minute later he ordered the helm put hard a'port (Ap. 290), and 25 or 30 seconds afterwards, *he saw the green light of the "Argyll", bearing two points on his port bow* (Ap. 290), and thereupon reversed full speed astern (Ap. 290), and the collision took place approximately a minute thereafter (Ap. 290). At the time he first ported, one and a half points, the "Gualala" swung to S. E. x S. $\frac{1}{2}$ S. (Ap. 297), and *at the time he saw the green light, the "Gualala" was heading S. S. W.* (Ap. 265). Subsequently, he testified that *he knew "for a fact" the "Gualala" was heading S. S. W. just a few seconds before the collision, for he noticed the compass* (Ap. 316-317-8).

Not only did Gibbs so testify, but graphically indicated the various compass headings of the "Gualala" upon a drawing, showing the S. E. course (first position), and the direction S. S. W. ("Gualala" A), to which she had swung by the time of the collision, though his drawing did not pretend to show the exact course through which she traversed in swinging from S. E. to S. S. W. (Libellant's Ex. "A", copy appended; Ap. 268, 271, 301-302, 315-6, 317-8, 321, 322). Furthermore, the position "Gualala" A, on the drawing, was the

heading of the "Gualala" when Gibbs noticed the compass three or four seconds before the collision. As she was still going ahead on a hard a'port helm, it is manifest that she must have been heading even more to the westward at the moment of impact (Ap. 315-16, 317, 323-4).

Whatever the period elapsing between the time Gibbs first altered the course to starboard and the collision, *is stands as his statement, by which the "Gualala's" version of the collision is to be adjudged, that she had swung as far to starboard as S. S. W., from the S. E. course, four or five seconds before the collision.*

GIBBS' STATEMENT AS TO THE "ARGYLL'S" BEARINGS AND LIGHTS WAS ABSOLUTELY INCORRECT.

It is claimed by Gibbs that, *while he saw the "Argyll's" range lights one and a half points on his port bow when the "Gualala" was headed S. E., he did not alter the "Gualala's" course until he saw the "Argyll's" red light, when he ported one and a half points (Ap. 262). He first saw the "Argyll's" green light two points on his port bow, when the "Gualala" was headed S. S. W. (Ap. 264-5).*

Two points are thus fixed by Gibbs:

- (1) *The "Gualala" was heading S. E. when Gibbs saw the "Argyll's" red light one and a half points on his port bow.*

- (2) *The "Gualala" was heading S. S. W. when the "Argyll's" green light was first seen, bearing two points on his starboard bow.*

According to Gibbs' statement, the "Argyll's" red light was seen one and a half points on the "Gualala's" port bow, while the latter was heading S. E. Referring, for convenience, to the drawing made by Captain Curtis (Claimant's Exhibit "F", copy appended), this would place the "Argyll" somewhere along the line A-C while the "Gualala" was on the S. E. course A-B. If the "Gualala" was traveling at a speed of eight knots, she advanced 406 feet in half a minute, so that when she ported one and a half points in a half minute, she must have been approximately at the position 3, at the expiration of the half minute after porting (Ap. 225, 226-7). She was then headed S. E. x S. $1\frac{1}{2}$ S. (Ap. 262, 286). As the "Argyll's" green light had not then come into view, it is manifest that the "Argyll" must have held to a course which kept her head above the line 3-C⁽²⁾, *for the moment her bow was on that course, her green light would have been seen* (Ap. 239-240, 236). Half a minute thereafter, Gibbs ordered his helm put hard a'port, at which time the "Gualala" must have reached position 4, according to Captain Curtis' judgment (Ap. 226-7, 232), as she was still forging ahead at 8 knots (406 feet per half minute), under her ported helm, for the "Gualala's" quartermaster had not steadied on his course at position 3 (Ap. 286), (Ap. 342-4). At this time, the "Argyll" must have been headed above the line 4-C, *as she still had not shown her green light* (Ap. 202). It is true, of course, that if the "Argyll"

had been below the line 4-C⁽²⁾, and if heading abaft the "Gualala's" bridge, she would not have shown her green light; but it is self-evident that she could not have reached such a position below line 4-C without having exposed her green light, for, to attain such position, she would have been required, first, to direct her course below the line 4-C⁽²⁾ under a starboard helm, and then swing back under a port helm, *necessarily showing her green light to the "Gualala" in the maneuver. This, according to Gibbs, she had not yet done.*

When the "Gualala" had proceeded for half a minute, being then in position 3, heading S. E. x. S. $\frac{1}{2}$ S., Gibbs ordered her helm hard a'port (Ap. 290), and, 25 or 30 seconds later, *he saw the "Argyll's" green light for the first time* (Ap. 290). *The "Gualala" was then heading S. S. W. (Ap. 265), and must have advanced to about position 4. Thereupon he reversed full speed astern (Ap. 290). When the green light of the "Argyll" is claimed to have come into view, while the "Gualala" was thus headed S. S. W., Gibbs says that it was two points on the "Gualala's" port bow. Now it is manifest, beyond all possible question, that the "Argyll" could not have been seen one and a half points on the "Gualala's" port bow, or even dead ahead, showing her red light to the "Gualala", while the latter was headed S. E., and then have altered her course to port and maneuvered so as to attain a position bearing two points on the "Gualala's" port bow when the "Gualala" was at position 4, heading S. S. W., and then, when on said two point bearing, for the first time have exposed her green light to the "Gualala".*

One has but to look at the drawing and see the enormous distance the "Argyll" would have had to travel to reach such two point position, for, even if, as shown by the Curtis drawing (Exhibit F), the "Argyll" was only 5500 feet distant from the "Gualala" when the latter ported her helm at position 1, instead of a mile and a half away, as stated by Gibbs (Ap. 262, 281-2), she would have been required to travel several times the distance that the "Gualala" did in the period elapsing between the time when the "Gualala" first ported until the "Argyll's" green light came into view.

Moreover, it is certain that the "Argyll" could never have reached a position two points on the "Gualala's" port bow while the latter was headed S. S. W., without having shown her green light to the "Gualala" while the "Argyll" was proceeding from her original position, for she would have been required to turn sharply to port on a starboard helm, and thus bring her starboard side to the "Gualala". It is conclusive, therefore, that Gibbs' statement of the bearings of the "Argyll", from the time he first ported until the "Gualala" was reversed, is absolutely incorrect.

This was recognized and admitted by Captain Curtis, for whom Mr. Lillick vouched as "not only an expert, but a very good expert" (Ap. 231), for he said: "It does not admit of any explanation, it is impossible" (Ap. 236, 237).

The absurdity of Gibbs' statement that the "Argyll's" green light first came into view two points on the

"Gualala's" port bow, 25 or 30 seconds after he hard a'ported, is further shown by the drawing made by him at appellee's request, on the taking of his deposition (Libelant's Exhibit "A", copy appended). He shows as position 3, the bearing of the two vessels when the helm of the "Gualala" was put hard a'port. The next thing he saw of the "Argyll" she was in position 4 (Ap. 268-269). *Her green light would then have been exposed to the "Gualala", and yet he claims that when he first saw the green light of the "Argyll", the latter bore two points on the "Gualala's" port bow, when the latter was heading S. S. W. (position "Gualala" A). If the "Gualala" was in position 3 when she hard a'ported and continued ahead at 8 knots for 25 or 30 seconds more, until the green light came into view at "Argyll's" position 4, then at that time, the "Gualala" must have swung farther to starboard toward a S. S. W. heading ("Gualala" A). It is plain to be seen that even if, when the green light was observed, the "Gualala" had been headed in the same direction as when her helm was hard a'ported at position 3, and the green light came into view when the "Argyll" was headed as shown by her position 4, the latter could not, even then, have been two points on the "Gualala's" port bow. Much less could she have had that bearing if, when in position 4, the "Gualala" had swung nearer to her S. S. W. course at the time the green light was first exposed.*

The incorrectness, therefore, of Gibbs' statement as to the "Argyll's" bearings up to the time he claims

to have first seen her green light is proved to a demonstration.

Adding to the absurdity is the testimony of the Look-out Comstedt that he "*never noticed any green light at all*" on the "*Argyll*" (Ap. 359).

**THE COLLISION COULD NOT HAVE OCCURRED AS DESCRIBED
BY GIBBS.**

It is impossible to ascertain definitely the position of the "*Gualala*" at the moment of the collision, as given by Gibbs. At the time he claims to have first seen the green light of the "*Argyll*", he says that the "*Gualala*" was heading S. S. W. (Ap. 265, 266, 267, 290, 297). He states that he then reversed full speed astern because of the green light (Ap. 264-5, 266, 267, 290, 294-5, 295-6), and says that the collision took place a minute later (Ap. 290, 291, 294-5). Subsequently, he testified that the "*Gualala*" was heading S. S. W. just a few seconds before the collision (Ap. 316), and claims that she was going ahead about a mile an hour at the moment of impact (Ap. 295-6, 317-8, 362-3). *If the "*Gualala*" was heading S. S. W. when Gibbs saw the green light, and the collision occurred a minute later, it is apparent that at the moment of impact the "*Gualala*" must have swung farther to the westward than S. S. W., and certainly farther in that direction than if the collision took place a few seconds after she was headed S. S. W., on seeing the green light. If the latter be the fact, and he reversed on seeing the green*

light (*which he says was what caused him to do so*), (Ap. 295), then the speed of the "Gualala" could not have been lowered to one knot per hour at the time of collision, for he testified that it required a minute for such reduction. We are thus left in uncertainty as to how far beyond the S. S. W. heading the "Gualala" had swung when the vessels came together, and as to what the "Gualala's" speed was at the time. *But it fixed, so far as appellees are concerned, that she had at least turned from the S. E. course to S. S. W., so that if, for the sake of argument, we assume her course at the moment of collision to have been S. S. W., we are taking the situation in its aspect most favorable to appellees, on the testimony of their own witnesses.*

The question which thus confronts the court, laying aside the inconsistency of Gibbs' statement that the green light of the "Argyll" first came into view two points on the "Gualala's" port bow when she was heading S. S. W., is whether a collision, 30° from ahead, could have occurred if the two vessels were, on sighting each other, in the positions fixed by Gibbs, and if at the moment of coming together, the "Gualala" was heading S. S. W., after having ported for half a minute until she was headed S. E. x S. $\frac{1}{2}$ S., then hard a'ported for half a minute, followed by reversing 25 or 30 seconds later, and then the collision a minute afterward.

The only independent witnesses, all of whom were competent to pass judgment on the question, including the expert produced by appellees, Captain Curtis, un-

equivocally stated that a collision could not have occurred as testified to by Gibbs.

On this point, Mr. James Dickie, the builder of the "Oregon" and many other war vessels and merchant ships, than whom there is a no more distinguished man in his profession in all of the United States, gave his opinion, as follows:

"Q. Mr. Dickie, I want to propound this question to you:

Assuming that the 'Gualala', a steam schooner, 120 feet long, loaded, while coming down the coast below Point Arena on a southeast course, making 8 knots per hour, observed, a point and a half on her port bow, the red light of the 'Argyle', a steamship 320 feet long, loaded, making 8 knots per hour, and that thereupon, the 'Gualala' ported her helm and payed off one and a half points in half a minute, and then hard a'ported for 25 or 30 seconds, and then stopped and reversed for a minute, but in the meantime, had swung $4\frac{1}{2}$ points more so that she was then on a south southwest course and still going ahead a mile an hour under a hard a'port helm, would it, in your judgment, have been possible for the 'Argyle', in the minute following the stopping and reversing of the 'Gualala', to have so changed her course to port as to have first shown her green light to the 'Gualala' when the latter stopped and reversed, and then to have struck the 'Gualala' on the angle you have shown in your models?

A. No, there was not room.

Q. Could it make that maneuver in that time?

A. In neither the time nor the distance.

Q. Through what sort of a course would the 'Argyle' have to go in order to bring herself into collision under those circumstances?

A. *She would have to make an S course and she would be stopping during that time, which would throw the whole thing adrift.*

Q. Which way would it require her helm to be put?

A. *She would have to have a starboard helm first and a port helm afterwards, and she never could have done it in the distance.*

Q. Could she have done it in the time?

A. *She could not have done it in the time or the distance.*

Q. Could she have done it in the time that the 'Gualala' was reducing her speed from 8 knots to one knot by reversing full speed astern?

A. No.

Q. Could she have done it in the time required for the 'Gualala' to have changed her course from southeast to southwest?

A. No."

* * * * *

"Q. Would not the possibility of her making this S. in the meantime depend a good deal upon how her helm was turned during that 4 minutes?

A. *If the 'Argyle' was in the position as reported from the 'Gualala' it was utterly impossible in the time to get in the position and in the direction in which the collision occurred.*

Q. Are you speaking of the 'Argyle' being in the position as she was reported from the 'Gualala' on the port side of the 'Gualala'?

A. On the port side, yes, of the 'Gualala'.

Q. What would have been the situation if she had been on the starboard side of the 'Gualala'?

A. *She might have made it if she had been on the starboard side.*" (Italics ours.) (Ap. 152-3, 155-6.)

To the same effect was the testimony of Captain Pillsbury, a shipmaster and experienced surveyor, so well known to proctors for his high character and dis-

tinguished ability that they readily admitted his qualification. He, too, answered in the negative the same question propounded to Mr. Dickie, summarizing the testimony of Gibbs as to the courses and bearings of the vessels (Ap. 161, 162).

So with Captain Ferris, Marine Superintendent of the Union Oil Company, as well as Captain Dickson of the "Argyll", and Captain George Curtis, formerly chief officer of the "Argyll" (Ap. 173, 180-1, 98-9, 100-1, 145, 148-9).

The soundness of these conclusions is demonstrated by reference to the drawings made by Captain Lebbeus Curtis (Claimant's Exhibit "F", copy appended).

Taking the "Gualala" at position 1, when she ported, Captain Curtis placed her at position 3, as the approximate point she would reach in a half minute. At that point, Gibbs claims to have hard a'ported, and, 25 or 30 seconds later, reversed on seeing the green light. Captain Curtis fixed position 4 as the maximum distance the "Gualala" would travel under her hard a'port helm, in half a minute (Ap. 232-3). As, however, she ran only 25 or 30 seconds, it would necessarily be somewhat short of the distance given; but taking it at 4 is resolving the discrepancy in appellees' favor. When at position 4, the "Gualala" is said to have reversed on seeing the green light, and the collision came a minute afterwards. If in that minute she swung only to a S. S. W. heading, she would have been about in position 6, according to Captain Curtis (Ap. 238-9). But if she reversed at position 4 and

reduced her speed from 8 knots to 1 knot at the time of the collision, and was then on a S. S. W. course, she would, in Captain Curtis' judgment, have been near position 5 (Ap. 233-4). In his opinion, however, she would, in the time required to reduce from 8 knots to 1 knot, have been still more to the westward than S. S. W. (position 5) (Ap. 233-4). Again, however, we take it at 5, manifestly in appellees' favor. Thus we fix, as nearly as can be done, the positions of the "Gualala" at the different periods:

Position 1—"Gualala" *ported her helm.*

Position 3—"Gualala" *hard a'ported.*

Position 4—"Gualala" *reversed on seeing green light.*

Position 5—"Gualala" *on S. S. W. course and speed reduced from 8 to 1 knot after reversing at position 4.*

Position 6—"Gualala" *on S. S. W. course in one minute after reversing at position 4.*

The speed of the "Argyll" was 8 knots per hour, or 810 feet per minute. We have shown that if the green light of the "Argyll" first came into view when the "Gualala" was at position 4, the "Argyll" must have been, at all times prior thereto, to the eastward (above) of a line drawn from position 4 to the "Argyll's" position 2, where she was, approximately, when the "Gualala" ported at position 1, for, if the "Argyll" had passed to the westward (below) of the line, *she would, in so changing her course, have exposed her green light to the "Gualala"* (Ap. 239-40). *If, then, the "Argyll" first showed her green light when the "Guala-*

la'' was at position 4, the farthest westward the "Argyll" could have been was at some point on the line from 4 to the "Argyll's" position 2 (C) (Ap. 239-40). According to Gibbs, this was about a minute before the collision. As the "Argyll", at her speed, made 810 feet per minute, she then must have been at about the point P on the line 4-2 (C), if, in fact, the collision occurred one minute after reversing (Ap. 240-241), for P is 810 feet distant from the "Gualala" at position 6, where the latter would have been, heading S. S. W., one minute after reversing at position 4. On the other hand, if the collision took place when the "Gualala" reduced her speed from 8 knots to 1 knot, two and one-half minutes after reversing, according to Captain Curtis' estimate, so that she was then in position 5, the "Argyll" must have been farther along on the line 4-2 than point O, 1620 feet distant from position 5 (Ap. 239-40), on showing her green light.

It is thus apparent:

First: That if the collision took place one minute after the "Gualala" reversed on seeing the green light, the "Argyll" must have traveled at least from point P to position 6, and must have so maneuvered that when the vessels came together, they were within 30° of meeting head and head.

Second: That if the collision occurred when the "Gualala's" speed had been reduced from 8 knots to 1 knot, the "Argyll" must have traveled from a point on the line 4-2 (C) beyond O, and so maneuvered as to meet as the vessels admittedly did.

The impossibility of the collision occurring under such conditions was frankly admitted by Captain Curtis, appellee's expert, but made claimant's witness (Ap. 240-41-42).

If the collision was possible, under the circumstances as Gibbs described them, certainly proctors would have produced some testimony to that effect. Captain Rinder was in court throughout the trial and was placed upon the stand as an expert on navigation, but proctors studiously avoided any reference to the question so determinative of the "Gualala's" fault. *Nor did they even produce as a witness upon the trial, the master of the "Gualala", or take his deposition, although he was the one more than all others who must have known of the "Gualala's" capabilities as to speed, reversing and stopping, answering her helm, and changing her course.*

The reason for the impossibility of the collision under the conditions is manifest. The "Argyll" was a large vessel, 320 feet long, 40 feet 7 inches beam, and 27 feet deep, with a tonnage of 2953 gross (Ap. 97-98). As described by Mr. James Dickie, Captain Pillsbury, Captain Dickson and Captain Ferris, *she would have been required to swing on a hard a'starboard helm and then, when she had gotten sufficiently ahead of the "Gualala", to reverse full speed astern, so as to stop her headway and swing to port, and then go ahead on a hard a'port helm and swing around so as to meet the "Gualala" at an angle of 30° from ahead, practically describing the figure S. To have done this, plainly would have required her to alter her course so sharply*

to port as to bring her onto a course practically parallel to that of the "Gualala", and heading the same way, and then, when she was far enough ahead of the "Gualala" to give her time to do so, she would have had to swing about sharply on a hard a'port helm. With both vessels making the same speed, 8 knots, and the "Argyll" more sluggish in responding to her helm (Ap. 51-52, 97-8, 140-1, 176-7, 219-20), it is manifest that up to the time the "Gualala" reversed, the "Argyll" could not have gotten as far, let alone farther, to the westward than the "Gualala", even if they were directly ahead of each other, and started to turn simultaneously. *With the "Argyll" farther to the eastward, where she would have been if she were one to one and three-quarters points on the "Gualala's" port bow, it is certain that the "Argyll" could not have gotten as far to the westward of the "Gualala's" S. E. course as did the latter up to the time she reversed, for both had the same speed, 8 knots. And if she did not, certainly Gibbs did not see the "Argyll's" green light for the first time two points on the "Gualala's" port bow when the latter was heading S. S. W., and the "Argyll" could not, in a minute, or while the "Gualala" was reducing her speed from 8 knots to 1 knot, have then gotten ahead of the "Gualala", and checked her headway and swung about on a port helm so as to bring the vessels together at the angle they met.*

Moreover, to find that the collision occurred as thus described by Gibbs would be to find that the "Argyll" deliberately starboarded her helm and turned to port

in the face of passing signals exchanged, which required the very opposite maneuver.

Is that reasonable or probable? In fact, is there, save for Gibbs' and the lookout's bald statements, anything in the entire record which can lead to the conclusion that their version was in accord with probabilities, let alone the facts or possibilities? Most certainly not.

What, then, becomes of Gibbs' statement as to the courses and movements of the "Argyll"? He, and his lookout *who never saw the "Argyll's" green light*, are utterly discredited. *In face of the fact that the collision could not, and, therefore, did not, result from the "Argyll's" swinging to port under a starboard helm, we respectfully submit that it cannot be found that the two vessels were approaching port to port, showing their red lights to each other.* On the other hand, if, as we shall show, the collision could have occurred if the vessels were approaching green to green, and each ported her helm, upon the "Gualala" indicating such change of course by one blast of her whistle, and the "Argyll" responding with a like signal, as testified to by all the "Argyll's" witnesses, then this court should find that the collision occurred in that manner.

This result means but one thing, and that is that the "Gualala" deliberately violated a positive rule of navigation, and, thereby, committed the primary fault of the collision, by porting her helm, and attempting to cross the "Argyll's" course, when not only the

“Rules of the Road”, but common sense, required her to pass starboard to starboard, either by holding her course, or by starboarding her helm, if change of course was required to pass in safety.

THE VESSELS WERE APPROACHING STARBOARD TO STARBOARD, AND THE COLLISION WAS CAUSED BY THE “GUALALA” PORTING.

The testimony of all of the “Argyll’s” witnesses who saw the lights and position of the “Gualala”, is unanimous that the “Gualala’s” range light was first observed about one and a half points on the “Argyll’s” starboard bow, and that immediately thereafter the green light came into view. The attention of McAlpine, the third officer, who was in charge of the bridge, was called to the light by the lookout, who reported a green light (Ap. 45-46). He saw that the approaching steamer was well clear on the starboard bow, in a safe position, and took two or three turns up and down the bridge (Ap. 47). Shortly afterward, the “Gualala” blew one whistle, ported her helm, and showed her red light to the “Argyll”, indicating to McAlpine that the “Gualala” was attempting to cross his bow (Ap. 47-48). McAlpine judged her to be about three ship-lengths off at the time, and there was, in his judgment, no time to do anything to avoid the collision except port the “Argyll’s” helm and try to clear the “Gualala” (Ap. 48). This he did, indicating to the “Gualala” his porting of helm, by one blast, and immediately following it up with a full speed astern

on the "Argyll's" engines, and three blasts on his whistle, as the rules required (Ap. 48). The two vessels came together, however, the "Argyll" striking the "Gualala" on the latter's port bow.

This was corroborated by the lookout, Hansen, who testified that the first he saw of the "Gualala" was her mast head light (Ap. 120), and that next he saw the green light bearing a point and a half or two points on his starboard bow (Ap. 121). He reported the mast head light to the bridge, and immediately thereafter the green light (Ap. 121). He says that then he heard one whistle from the "Gualala", and continued to see the green light for a second afterwards, and then "just a few moments" after the one whistle, saw the red, green and mast head lights together for an instant (Ap. 121, 124-5). The vessels came together at an angle which admittedly exposed only the "Gualala's" red light to the "Argyll".

Hansen estimated the distance of the "Gualala" away at the time he first saw her lights, at about three or four shiplengths, and at about three shiplengths when she blew one whistle (Ap. 126-7). He says that the "Argyll" answered the one whistle with a like blast (Ap. 121), and just a few seconds afterwards he heard three whistles from the "Argyll" (Ap. 122-3).

The quartermaster, Torbjorsen, who was stationed in the pilot-house, steering the "Argyll", looked out when he heard the lookout first report the lights (Ap. 139-40), and saw the mast head light about a point and a half on the "Argyll's" starboard bow (Ap. 136-37, 139-40). He received an order from McAlpine to hard

a'port his helm immediately after the "Argyll's" one whistle, which order was obeyed (Ap. 137-8). He also heard three whistles blown by the "Argyll" shortly after the first whistle, guessing the intervening time to be about one minute (Ap. 137-8).

Captain Dickson heard the first whistle of the "Argyll" as he was coming out of the mess room where he had stopped to get a cup of coffee, on his return from the toilet (Ap. 95-7), and immediately went to the bridge as fast as he could, and, on arriving there, saw the "Gualala" between a point and a point and a half on the "Argyll's" starboard bow, showing her mast head light and a red light, and crossing his bow (Ap. 95-7). While going along the deck to the bridge, he heard other whistles from the "Argyll", which he thought were three, but would not state positively (Ap. 96-7). He gave no orders after reaching the bridge because there was no time (Ap. 97-8, 103).

The foregoing testimony establishes beyond all doubt that the "Gualala" approached on the "Argyll's" starboard bow, showing her green light, at a bearing of one and a half to two points, and that shortly after the green light came into view, the "Gualala" blew one blast on her whistle, ported her helm and attempted to cross the bow of the "Argyll".

It further shows that immediately the "Gualala's" one whistle was heard, indicating her intention to port, the "Argyll" answered with a like whistle, hard a'ported, and reversed full speed astern, advising the

“Gualala” of the fact by three blasts, as the only possible way of avoiding the danger of collision precipitated by the wrongful change of course by the “Gualala”.

It was the opinion of Captain Pillsbury that the collision could have thus occurred so as to have brought the vessels together at the angle of impact testified to by Mr. Dickie (Ap. 162), and that “*that is the only way it could be*” produced (Ap. 164-5). This was likewise the opinion of Captain Curtis (Ap. 248, 249-50, 250-1).

In view, therefore, of the fact that the vessels could not have come together as they did if they were approaching so that the “Gualala” had the “Argyll’s” red light on her own port bow, but that the collision could have occurred at the angle at which they met, if they were approaching green to green and the “Gualala” ported in an attempt to cross the course of the “Argyll”, and the latter, in turn, hard a’ported in an effort to swing clear, as testified by the “Argyll’s” witnesses, we respectfully submit that the court should find that the collision so occurred. This is in accord with what must have been the opinion of the lower court, for it found that the “Gualala” was on a crossing course upon the “Argyll’s” starboard side. It could never have been so if the vessels approached and altered their courses as testified by the “Gualala’s” witnesses, but naturally would have resulted from the “Gualala” porting her helm, and, thereby exposing both her lights, and then shutting out the green, if they approached starboard to starboard.

THE "GUALALA" WAS IN FAULT FOR PORTING HER HELM AND ATTEMPTING TO CROSS THE COURSE OF THE "ARGYLL", AND MUST BE HELD RESPONSIBLE FOR THE ENSUING COLLISION.

The collision having been caused by the "Gualala" porting her helm and attempting to cross the course of the "Argyll" at a time when the vessels were approaching starboard to starboard, the "Gualala" must be condemned in fault.

This was so held by Circuit Judge Sawyer and District Judge Hoffman in the United States Circuit Court, District of California, in the case of

The Ping-On v. Blethen, 11 Fed. 607,

on an appeal from a decree rendered by the United States Consular Court at Shanghai, China. In that case, the brig "Condor", in tow of a tug, and the steamer "Ping-On" were approaching with their green lights to each other, the lights of the steamer bearing from two to two and a half points on the "Condor's" starboard bow when first seen. The "Ping-On" was held in fault for porting her helm. On the question of liability, Judge Hoffman, writing the opinion, said:

"It may not be improper, however, to make some observations with regard to the liability of the latter.

"If we are right in considering the tug and tow free from fault, the collision must be attributed to the fault of the Ping-On, or to inevitable accident.

"(1) The evidence, we think, shows that if the Ping-On had held her course the vessels would have passed clear of each other.

“(2) *If the Condor's green light had been sighted by the steamer on her starboard bow, and the red light not sighted, she was clearly wrong in porting her helm, the vessels not being ‘end on, or nearly end on’, to each other within the meaning of the rule.*” (Italics ours.)

In

The Roanoke, 45 Fed. 905,

the brigantine “Hyperion”, having, under the rules, the right of way over the steamship “Roanoke”, was held solely in fault for changing her course across that of the steamer.

The case of

The Eagle Wing, 135 Fed. 826, (affirmed) 162 Fed. 827,

is similar to that of the case at bar in point of principle, though the collision was between two sailing vessels. They were approaching each other with their lights red to red, when the “Eagle Wing” suddenly changed her course so as to shut in her red light and expose her green light, and struck the “Hargraves” on her port side abaft amidships. The court held the “Eagle Wing” solely in fault.

A decision peculiarly in point with the one now before the court, and determinative of it, is that of the Circuit Court of Appeals for the Third Circuit, in

The Atlantic City, 143 Fed. 451,

reversing the District Court, and holding the steamer “Sylvan Glen” alone in fault. The “Sylvan Glen”

was bound up the Delaware River, and the "Atlantic City" bound down, the two vessels showing their green lights to each other. While so approaching, each gave to the other a passing signal of two blasts, which the pilot of the other did not hear. When they had reached a position of probably not more than 300 feet apart, the "Sylvan Glen" suddenly ported her helm, and sheered across the "Atlantic City's" bow, resulting in the latter striking the former on the port bow. The court held the "Sylvan Glen" responsible, notwithstanding she had apparently mistaken a single blast from a tug as a signal from the "Atlantic City" calling for a ported helm.

The Supreme Court in

The Free State, 91 U. S. 200; 23 L. ed. 299, affirmed a decree of the Circuit Court dismissing a libel brought by the owner of a sailing scow against the propeller "Free State", on the ground that the loss of the scow was due solely to her fault in suddenly changing her course across the bow of the propeller while the two vessels were approaching starboard to starboard.

In

The Manitoba, 122 U. S. 154; 30 L. ed. 1095, the Supreme Court considered the question of the liability of the "Manitoba", involved in a collision between that vessel and the steamer "Comet", resulting from the latter porting her helm and suddenly sheering across the "Manitoba's" course at a time

when the vessels were approaching on nearly opposite courses with their green lights showing to each other. The District Court (F. C. 9029) held both vessels in fault. An appeal was taken by the owners of the "Manitoba" to the Circuit Court, but the owners of the "Comet" did not appeal. The Circuit Court affirmed the decision of the District Court, and an appeal was then taken by the "Manitoba" to the Supreme Court, which affirmed the decisions of the lower courts. On the question of the "Manitoba's" fault, Mr. Justice Brown, delivering the opinion of the court, said:

"On the facts, the Circuit Court found as a conclusion of law, and we think correctly, that the 'Manitoba' was in fault in not indicating her course, by her whistle, and in not slowing up, and in failing to reverse her engine until it was too late to accomplish anything thereby."

It will be noted that *the District Court readily found the "Comet" at fault for making a change of course identical with that of the "Gualala"*, in the case at bar. *The "Manitoba" was also held because, prior to the sudden porting of the "Comet", her bearing in on the "Manitoba" was observed by the latter, indicating a porting, and yet the "Manitoba" starboarded and continued ahead at full speed, instead of slowing and reversing, until it was too late to accomplish anything. Here, the "Argyll", by porting, and immediately reversing, and indicating it by her whistles, took the very measures, for the want of which the "Manitoba" was condemned.* This case, therefore, is clearly an authority for holding the "Gualala" responsible.

A case of marked similarity to the one at bar in respect to the differing versions of the collision, and the primary cause of the same, was that of

Stoomvaart Maatschappij Nederland v. Peninsular and Oriental Steam Navigation Company, L. R. 5. A. C. 876.

It was admitted that the "Voorwaarts" ported her helm and that the "Khedive", starboarded, but, as in the case at bar, those on board the "Voorwaarts" claimed that the steamships were approaching with their red lights opposed, whereas the witnesses for the "Khedive" asserted that they were starboard to starboard. The case was tried in the Court of Admiralty, which held both steamships liable, but, on appeal, the Court of Appeal varied that decision and found the "Voorwaarts" alone at fault. An appeal was then taken to the House of Lords, which reversed the Court of Appeal and held both vessels in fault.

The Court of Appeal came to the conclusion that the steamships were approaching each other green light to green light, with so large a bearing as to make it certain that if both kept their course they would have passed in safety. It also found that while so approaching, the "Voorwaarts" suddenly put her helm hard a'port and sheered toward the "Khedive". The "Khedive" thereupon hard a'starboarded, and an order to "stand by" was given to the engine room. Half a minute later, full speed astern was ordered, but the collision was not avoided. The Court of Appeal held the "Voorwaarts" for porting, but exonerated the

“Khedive” on the ground that while her master did not do what was absolutely the right thing by ringing to “stand by”, instead of immediately reversing, he was not to be found guilty of want of ordinary care, and skill, and nerve, under the difficult circumstances in which he was placed.

The House of Lords, while apparently not disagreeing with the advice of the nautical assessors to the Court of Appeal as to the conduct of the “Khedive’s” master, and with regret that they were compelled to reach a different conclusion from the Court of Appeal, reversed that decision, and held the “Khedive” liable under the provisions of the Merchant Shipping Act, 1873, 36 and 37 Vict. C. 85, S. 17, providing in effect, that any ship infringing any regulation for preventing collisions shall be deemed at fault, unless it is shown to the satisfaction of the court that the circumstances of the case made departure from the regulations necessary.

There was no question in all the minds of all the courts about the fault of the “Voorwaarts”, in porting, but the “Khedive” undoubtedly would not have been held liable, except for the drastic statutory provisions, and most certainly would have been exonerated if she had immediately reversed upon seeing the red light of the “Voorwaarts”. Inasmuch as the “Argyll” did reverse at once, the case is a positive authority for holding the “Gualala” alone to blame for the present collision.

It must follow that the "Gualala", by porting her helm and attempting to cross the bow of the "Argyll", at a time when their courses would have carried the vessels clear, committed the fault which produced the collision, and must be held responsible therefor. The fault of the "Gualala" being thus obvious and inexcusable, and adequate in itself to account for the collision, all presumptions will be resolved in favor of the "Argyll", and she will not be condemned except by clear and convincing proof of a contributory fault.

Belden v. Chase, 150 U. S. 674; 37 L. ed. 1218;

The Oregon, 158 U. S. 186; 39 L. ed. 943;

The Victory, 168 U. S. 412; 42 L. ed. 519;

The Chicago, 125 Fed. 712;

The Wm. Chisholm, 153 Fed. 704;

The Georgetown, 135 Fed. 854.

THE ALLEGED FAULTS OF THE "ARGYLL".

I. *The Lookout.*

The District Court expressed the opinion that the "Argyll" must be held responsible for the collision for

"inefficiency of the lookout in not reporting when the 'Gualala's' red light and her green light were visible at the same time, and in not reporting when he lost her green light and picked up her red light alone".

Neither the evidence nor the law, we respectfully submit, sustains the ruling of the District Court. Hansen, the lookout, testified that he saw the mast headlight

and immediately afterward the green light, at what he estimated to be three or four ship lengths off, a point and a half or two points on the starboard bow, both of which lights were immediately reported to the bridge (Ap. 119-22). The fact that the lights were not seen a greater distance off did not indicate want of diligence, for it may have been due to atmospheric conditions, of which there was at least some evidence from both vessels (Ap. 110-20, 259-6). Surely the foregoing shows a proper performance of the lookout's duty.

What then happened? The "Gualala" blew one whistle which was immediately answered, a fact established by a concurrence of testimony from both vessels (Ap. 121-2, 262). What could that have meant to him, or to any lookout, other than that the presence and the intended change of course by the "Gualala" were known to the bridge officer of his own vessel? Did his failure, then, to report a change of course, and a whistle showing such alteration, which was, on the admission of the "Gualala's" witnesses, immediately answered, contribute to the collision? Most certainly not.

And then what? What maneuver did the one whistle of the "Gualala" indicate she intended making? Hansen knew, and any other seafaring man would have known, that it meant a porting of helm, and that such a change of course on the "Gualala's" part would expose both her lights for an instant, and then shut out her green light and leave alone the red light. He knew from the answering of the whistle by the "Argyll" that the bridge officer of the latter was alive to the proposed

change of course, and its effect upon the "Gualala's" lights (Ap. 131-32). Can he then be said to have been negligent and inefficient in not reporting both lights, the disappearance of the green, and then the red light alone, when he knew that his bridge officer was advised as to the situation? We submit not.

This was pointed out in

The Livingstone, 113 Fed. 879, 882,

wherein the "Traverse" was held not in fault though her lookout left his post, the court saying:

"Any intelligent man must have known from the whistle in what direction the 'Traverse' was going to swing, and no light was needed to tell him that if he starboarded, he would bring his own boat into peril."

And if Hansen had reported both lights, and then the red light alone, it would not have avoided the collision, for immediately the proposed change was made known by the "Gualala's" one blast, the officer of the "Argyll" did all that could be done, by porting his helm, and reversing full speed astern, in an endeavor to throw her away from the altered course of the "Gualala". No inefficiency or negligence of the lookout, therefore, conduced to the collision.

II. *The Deck Officer.*

The District Court was also of the opinion that the "Argyll" must be held responsible for the collision

"for negligence on the part of McAlpine, the deck officer, in not observing the 'Gualala's' course

because of his failure to note when her red light and her green light were visible together, and when her green light disappeared from view; because of his failure to observe her red light until warned by her whistle; and because of the fact that when the 'Gualala's' lights were first sighted he contented himself with directing the quartermaster not to let her come any closer, apparently paying no further attention to her until warned by her whistle when it was too late to avoid a collision."

We may, perhaps, be permitted to anticipate that proctors for appellees will, as they did in their briefs in the court below, make strenuous attack upon the credibility of McAlpine, the third officer of the "Argyll", in charge of her navigation at the time of the collision. This was laid upon two points, the authorship of the entry in the log "Altered course $\frac{1}{2}$ point to port", and the statement made by him in his report to the inspectors that he gave the danger signal. We say frankly to the court; as we did to the trial court, that we believe McAlpine mistaken when he said, in effect, that he did not make the log entry, for we are of the opinion that it is in his handwriting. Likewise, we believe that he was in error in his report to the inspectors about the danger whistle. We ask no sufferance at the hands of the court because of such errors, however, for we fully appreciate that they entitle both counsel and the court to accept the officer's testimony upon other matters only after the closest scrutiny as to its reliability. But we do suggest that if in other particulars pertinent to an ascertainment of the cause of the collision, the mate has given evidence corroborated by those not subject to the same suspicion, the testi-

mony of the mate should be received with such weight as the court deems proper.

The log entry indicates an alteration of course one-half point to port. The quartermaster said that he held to his course until the hard a'port order came. We cannot, therefore, urge the acceptance of the log entry, nor can we ask the court to disregard it, if it feels that we are bound by it. We do, however, assert, if the court believes it to establish that the course was so changed, which, in view of the quartermaster's statement, we do not think was done, that such alteration of course was not a fault, but a very proper maneuver with the "Gualala" approaching to starboard. That alteration, if it took place, certainly did not contribute to the collision, for it would have veered the "Argyll" away from the "Gualala". But even if the entry be accepted as binding, it constitutes no ground for asserting that the "Argyll's" course continued to port, against the positive statement of the quartermaster to the contrary, and against the one blast whistle, which required the opposite change of helm, the error of which, if the "Argyll's" course was continued to port, would have been known both to the quartermaster and the lookout. Moreover, if such change to port was made, or a prior one continued upon the whistle, it is unanswerable that it would have immediately exposed the green light to the "Gualala", and yet Gibbs says that he never saw it until 25 or 30 seconds after he had hard a'ported to S. S. W. from S. E., and then it showed two points on his port bow. These facts, taken together, justify the belief that the "Gualala's" green light was on the

“Argyll’s” starboard bow, and that upon hearing the former’s whistle, the helm of the “Argyll” was immediately hard a’ported.

This can not be claimed to have been an error. It is apparent that it offered the only chance of escape from the extremity in which the “Argyll” was placed by the “Gualala’s” sudden attempt to cross her bow (Ap. 49-51). What else was to be done? Could it be reasonably suggested that her helm should have been starboarded, or that she should have been held steady in her course? The situation created by the wrongful maneuver of the “Gualala” certainly did not call for either, but did require the very act which was done by the “Argyll”. This was forcibly pointed out by Judge Brown in

The Manitoba, supra, F. C. 9029,

a case of collision that so nearly parallels the present as to strike immediate attention. There, the “Manitoba” hard a’starboarded when the “Comet” suddenly turned across her bow from a starboard hand course. Of the starboarding of the “Manitoba’s” helm, the court said:

“While I make no criticism upon the action of the ‘Manitoba’ here in putting her helm hard a’starboard, *although I think this was an error*, I am of the opinion that she should have stopped and reversed. *If she had ported or slowed and backed*, and perhaps if she had done nothing, the collision would not have taken place.”

McAlpine was not, then, in error, when, upon being advised that the “Gualala” intended crossing his bow,

he ported his helm and advised the "Gualala" of that fact. Had he alone ported, however, he would surely have fallen within the condemnation of the court, but instead, he immediately reversed full speed astern, as suggested by Judge Brown to be the proper maneuver under similar circumstances.

It is to be noted that the lower court made no criticism of the hard a'porting of the "Argyll's" helm and the reversal of her engines, as a wrong maneuver, but did comment adversely upon an alleged failure on McAlpine's part to note quicker the change of the "Gualala's" lights. The criticism is without merit, unless it was imperative that McAlpine should have kept his eye at all times fixed upon the "Gualala" after he first saw her.

It clearly appears from McAlpine's statement that he saw the "Gualala's" green light bearing one and a half points on his starboard bow, and that he knew there was no risk of collision therefrom. He, thereupon, did what we submit was reasonable and prudent seamanship, *paced the bridge*. With the "Gualala" approaching on that bearing, showing her green light, there was manifestly no risk of collision if the "Gualala" did her duty and held her course, for the two vessels could not have collided. This was clearly pointed out in the late case of

Duluth S. S. Co. v. Pittsburg S. S. Co., 180 Fed.
656, 658,

wherein the court said:

"When the colliding vessels became factors in their proper navigation with relation to each other,

they were three-quarters of a mile apart. Each of them had the other on her starboard quarter about half a point. Had the relation continued, the vessels would have passed starboard to starboard in safety."

The Manitoba, supra.

With two vessels approaching with like lights opposed, on a bearing that meant certain passing in safety if each held her course, we know of no decision which holds a vessel in fault because her bridge officer continued to pace her bridge (40 feet wide) keeping his watch over both bows, and observing the approaching steamer when he walked the bridge toward the side she was on. Even Captain Curtis admitted such to be the custom on board ship, for he testified:

"Q. Would you keep your eye on the green light all of the time?

A. Not every second, no.

Q. Would you not and is it not customary for the officers to pace the bridge when they are on watch?

A. Yes.

Q. And if an officer on the bridge sees a light on one side or the other a distance off which he judges is a safe passing distance, is it not customary for the officer to pace the bridge keeping a lookout over both bows?

A. Yes" (Ap. 219).

Captain Rinder, on the other hand, would have the court believe that it was proper navigation to have the bridge officer stand in one position on the side of the bridge nearest to the approaching vessel, with his eye constantly upon her, and, on his own admission, thus leave the other side without a bridge watch. We do

not anticipate that any weight will be given to such evidence, for a proper bridge watch is not neglecting either bow, but, as Captain Curtis admitted, lookout over both bows is to be maintained by customarily pacing the bridge. Had the "Gualala" been approaching "head on", undoubtedly close watch would have been required, but, when the vessels were on passing courses, which, if maintained, as each had the right to rely upon, would have carried them by in safety, it certainly cannot be seriously urged that it was negligence for McAlpine not to stand in one position with his eye constantly upon the "Gualala", in anticipation that she would commit an error which the courts have characterized as highly improbable.

It is admitted by the "Gualala" that she did not change her course until her one blast passing whistle was blown, so that up to that time the change in her lights had not taken place. *Immediately such whistle was blown, McAlpine ordered his helm hard a'port, and at the same time blew one blast on his whistle, advising the "Gualala" of the porting, then instantly reversed full speed astern and gave three blasts on the "Argyll's" whistle* (Ap. 47-48). The fact that such porting and reversing took place immediately upon receipt of the "Gualala's" passing signals is supported not only by McAlpine's statement to that effect, but by the master, the engine-room log book and the nature of the damages.

The master was just coming out of the mess-room with a cup of coffee in his hand, when he heard the first whistle (Ap. 96-97), and immediately went to the bridge

as fast as he could get there (Ap. 95). A series of whistles, which he took to be three, were blown just as he was getting onto the poop-deck (Ap. 96-97), and upon reaching the bridge, he found the "Argyll's" helm hard a'port and her engine working full speed astern, with the "Gualala" about one and a half points on the star-board bow, showing her red light (Ap. 96-98). *This establishes beyond peradventure that the three whistles were blown immediately after the one blast, and the engine reversed with the helm hard a'port.*

Furthermore, the "Argyll" suffered no damage, which shows, as Mr. Dickie testified, that her speed must have been greatly reduced (Ap. 154-155). This, manifestly, could not have been accomplished in the time elapsing between the "Gualala's" alteration of course and the collision, unless the engine was immediately reversed upon the "Gualala's" porting.

Surely, therefore, the evidence clearly establishes that no delay took place in the immediate and proper maneuver of the "Argyll" under most surprising and trying circumstances. It will, indeed, be harsh justice to condemn McAlpine for not having his eye fixed upon a vessel, so situated as to pass in safety if the rules of the road were but obeyed, at the very moment a violation of such rules took place, in view of the fact that immediately such change of course was made, he had the coolness and intelligence to do the one thing which could possibly prevent the collision, by making the very maneuver which has met with the approval of both English and American admiralty courts, porting his

helm and reversing, and indicating such maneuvers by their proper signals.

We respectfully submit, therefore, that the District Court erred in charging the "Argyll" with fault.

ASSUMING THAT THE VERSION OF THE COLLISION TESTIFIED TO BY THE "GUALALA'S" WITNESSES IS TRUE, IT ESTABLISHES INEFFICIENCY AND NEGLIGENCE ON THE PART OF THE BRIDGE OFFICER AND LOOKOUT.

The Bridge Officer.

If it be assumed, for sake of argument, that the statement of Gibbs, first officer of the "Gualala", was correct in that the "Gualala", while proceeding on a S. E. course, saw the range lights of the "Argyll" bearing about a point and a half on the "Gualala's" port bow (Ap. 261-2), and, that thereupon one whistle was blown, and the helm ported, altering the "Gualala's" course a point and a half to starboard (Ap. 262, 286, 297); that a half minute later the helm was put hard a'port (Ap. 290), and 25 or 30 seconds afterwards, when the "Gualala" was headed S. S. W., the green light of the "Argyll" was observed bearing two points on the "Gualala's" port bow (Ap. 290), whereupon the "Gualala" was reversed full speed astern, *then such statement proves to a demonstration that Gibbs was not maintaining the efficient watch required of a bridge officer.*

If the court will but refer to Gibbs' drawing (Libelant's Exhibit A, copy appended), or to that made by

Captain Curtis in open court at appellant's request (Claimant's Exhibit F, copy appended), or to the latter's drawing made by him at appellees' request before he was produced as an expert witness by them (Libelant Beadle's Exhibit 4), it will be at once apparent that if the "Gualala" had the "Argyll" a point and a half on her own port bow, or even dead ahead, when the "Gualala" first altered her course to starboard, the "Argyll" could not have changed her course to port, as contended by Gibbs, without immediately exposing her green light to the "Gualala".

Take "Libelant's Exhibit A"! Gibbs shows the "Argyll's" green light broadly exposed when the latter was in her fourth position, and she certainly was not then two points on the "Gualala's" port bow when heading S. S. W. From the moment she would swing to port from her third position, she would begin to bring the green light into view, and so continue it until the collision.

Similarly with Claimant's Exhibit "F".

The instant the "Argyll" should swing to port so that her bow would be below the line 3 C (2) or 4 C (2), she would expose her green light to the "Gualala". Moreover, such alteration of course would be necessary if she were to pass from a position on the port bow of the "Gualala", or even dead ahead, to two points on the latter's port bow when she was heading S. S. W. at positions 4, 6 or 5. It demonstrates either the absurdity of Gibbs' statement as to the positions and movements

of the two vessels, or the utter carelessness of the watch he maintained.

And so with Libellant Beadle's Exhibit "4".

The "Argyll" at position A is showing her green light to the "Gualala", and would continue to do so during all the time she followed course B, until the impact, and yet not until the "Argyll" is shown as swinging back to the eastward under a port helm, from her dip to the westward on the course B, is she any where near two points on the "Gualala's" port bow.

It establishes beyond dispute that if Gibbs first saw the "Argyll's" green light two points on the "Gualala's" port bow, when the latter was headed S. S. W., he could not have been watching her with any degree of care after he first ported and gave the one blast passing signal. Thus, on her own bridge officer's testimony, taken at its face value, the "Gualala" must be held at fault.

The Lookout.

It is even worse with the lookout. Notwithstanding that the "Argyll's" green light would have been continuously in view to the "Gualala" from the time the "Argyll" altered her course to port, until the moment of collision, if Gibbs' statement were correct, *the lookout says positively that he never saw it*, although he claims to have been standing on the "Gualala's" forecastle head until the collision (Ap. 358-9).

His testimony so illuminates either the watch that was being maintained on the "Gualala", or the unre-

liability of the "Gualala's" version of the collision, that we quote it:

"Mr. CAMPBELL. Q. Where were you standing at the time of the collision?

A. Upon the forecastle head.

Q. I thought you said you ran aft?

A. Well, when she struck I ran aft.

Q. *What lights did you see on the 'Argyll'?*

A. *Her red light and mast light.*

Q. *That is all.*

A. *Yes.*

Mr. WALL. Q. *Did you see any green light at any time?*

A. *No, never noticed any green light at all.*

* * * * *

Q. You say you could see the 'Gualala' swinging to starboard?

A. I could see her swinging on those lights when we started to swing.

Q. *How far did you swing around to starboard as far as you could tell?*

A. *Well, I don't know, quite a bit all right, four or five points,* something like that.*

Q. And the 'Argyll' was coming toward you all the time?

A. Yes, she was coming after us. *I could not see her swing at all.*

Q. You were watching her during that time?

A. Yes.

Q. *You could not see her green light at any time?*

A. *I did not notice her green light at any time.*

Q. *Did you ever notice her green light at all?*

A. *No, I never noticed it.*

Q. Where did she strike the 'Gualala', the 'Argyll'?

A. Just on the break of the forecastle head.

* Five points from the S. E. course of "Gualala" would be S. x W., within one point of S. S. W. stated by Gibbs.

Q. *Do you know about what sort of an angle she struck?*

A. *Well about right ahead like, pretty near right ahead''* (Ap. 358-360).

It is interesting and instructive to contrast Gibbs' testimony with the foregoing.

"Q. What was the first that you saw of the 'Argyll'?"

A. I saw her range light when I first saw her.

Q. About how far away was it when you saw it then?

A. It was about a mile and three-quarters, or a mile and a half'' (Ap. 261).

* * * * *

"Q. What bearing were those lights from you?"

A. Well, those range lights that I saw were nearly in range.

Q. And upon which side of your bow were they?

A. They were on my port side.

Q. About what distance in points on the bow itself, if you know?

A. About a point and a half on the port bow.

Q. What lights, if any, did you see next on the 'Argyll'?

A. About 3 minutes before the collision I saw her port side light.

Q. Were you watching her in the meantime?

A. Yes, I had been watching these range lights to see if she had changed her course.

Q. Did she change her course any?

A. She did not change her course up till that time.

Q. Then what occurred?

A. Then I blew her one blast of the whistle, which she answered immediately.

Q. What did you do as to giving orders to your man at the wheel?

A. I told my man at the wheel to put his helm to port; the vessel paid off about 1½ points.

Q. What difference, if any, occurred, as to the lights of the 'Argyll'?

A. Well, I seen the 'Argyll's' range light changing, but I did not see any other side lights except the red light, and I told the man at the wheel to put him helm hard a'port.

Q. In which direction did these range lights change, if you know, as to whether or not the 'Argyll' was coming upon one course or another?

A. Well, it did not look to me as though she had changed her course, but it appeared that she was not porting her helm at that time; it looked to me as if she had not ported her helm; it looked to me as though she was coming to starboard.

Q. How long after that was it before you saw her side lights?

A. *Then the next thing I saw was her green side light.*

Q. *Was that after you had seen her red light?*

A. *Yes, that was after, yes.*

Q. *How long after?*

A. *Well, it was about a minute and a half.*

Q. Going back to where you were watching her range lights, Mr. Gibbs, I do not understand the testimony showing that you saw a red light before having seen her green light. Which of her side lights did you see first, after having seen her range lights?

A. I seen her red side light first.

Q. *How long was it after you saw her red side light that you saw her green light?*

A. *It was about a minute and a half afterwards.*

Q. On what course were you steering then?

A. We were steering about south southeast then—no, no. *The helm was hard a'port then, and I had not seen this green side light at that time.*

Q. Mr. Gibbs, go back to the time when you saw her range lights first, and in your own way tell consecutively what courses you were steering when you first saw his range lights, and then when one light after the other, if they did, came up, and what

you did about changing your course. Commence with the course that you were steering when you saw the range lights.

A. Well, the first thing I saw was her range lights.

Q. What course were you steering then?

A. We were steering south southeast, or south-east" (Ap. 262-4).

* * * * *

"Q. You saw her range lights; then what?

A. I saw her range lights and I saw her port side light; I blowed one blast of the whistle, and told the man to put his helm to port; we was heading south southeast then. I seen these range lights changing and I told him to put his helm hard a'port, and then I saw the green side lights; then I stopped and backed full speed astern.

Q. *When you stopped and backed full speed astern upon what course were you steering, if you know?*

A. *Well, we was heading south southwest at that time.*

Q. *South southwest?*

A. *South southwest, yes.*

Q. What whistles, if any, did you hear upon the 'Argyll'?—did he answer your one whistle?

A. He answered the one whistle, but he didn't blow any more whistles; there was no more whistles blown.

Q. Did you hear any signals from the 'Argyll' with reference to his stopping and backing?

A. No, I don't think he ever stopped and backed. I think he was going full speed all the time.

Q. From the lights upon the 'Argyll' in your position what, if any, change did the 'Argyll' make in her course from the time you first saw the range lights until the collision?

A. *Well, the way it looked to me, the 'Argyll' put her helm hard a'starboard.

* This would immediately have brought her green light into view.

Q. When?

A. Well, when she answered this one whistle.

Q. Then what change did she make in her course after that, if she made any?

A. Then she put her helm hard a'port; and the way I think that happened was this, that the third mate answered that——" (Ap. 264-5).

* * * * *

"Mr. LILLYCK. Q. You can state, Mr. Gibbs, what you saw her do and from those lights what she did do.

A. Well, it appeared to me that when I blowed that one whistle she was swinging to starboard.

Q. Could you tell whether she had commenced to swing to starboard before you blew that one whistle?

A. No, I think she was on her course at that time.

Q. When did she commence to swing to starboard, if she did?

A. Shortly after I blew that one blast of the whistle I noticed her range light begin to change, and that is why I ordered the man to put his helm hard a'port" (Ap. 265-6).

* * * * *

"Q. After you blew your one whistle you ported your helm, and she continued to swing on that port helm?

A. Yes.

Q. You say the 'Argyll' answered with one whistle?

A. One whistle.

Q. What did you do next?

A. Well, I seen the 'Argyll's' range lights changing.

Q. The range lights changing?

A. Yes, and I told my man to put his helm to hard a'port.

Q. How were they changing? How could you tell the range lights were changing?

A. Well, they appeared to me they were changing.

Q. And it was by those range lights that you were judging that she was swinging?

A. Yes.

Q. Which way did you think she was swinging?

A. Well, I thought she was swinging to—I thought she was swinging a little to starboard.

Q. Then you at that time ordered your helm to hard a'port?

A. I still seen that range light, and I ordered him to put his helm hard a'port.

Q. From that time, from the swinging of the range lights you thought the 'Argyll' was swinging to starboard?

A. I thought she was swinging a little to starboard; it appeared that way to me.

Q. How long before the collision was it that you put your helm hard a'port?

A. It was about a minute and a half.

Q. How long was that after you had first put your helm to port?

A. It was about half a minute.

Q. Her bow was then swinging to starboard under her port helm with the engines working full speed ahead, going about 8 knots?

A. Yes, her engines were going full speed ahead.

Q. *What was the next that you saw of the 'Argyll'?*

A. *The next thing I saw was a green light.*

Q. How soon was that after you put your helm hard a'port?

A. That was about 25 or 30 seconds.

Q. How far distant was the 'Argyll' from you at that time?

A. About a quarter of a mile.

Q. *How did she bear from you?*

A. *She was on our port bow.*

Q. *How much?*

A. *She was about 2 points on our port bow.*

Q. *How soon after you saw the 'Argyll's' green light did you reverse full speed astern?*

A. *Right away.*

Q. *That was about 25 seconds before the collision, 25 or 30 seconds before the collision?*

A. *No, it was about a minute before the collision.*

Q. *You have just stated that you saw the green light about 25 or 30 seconds before the collision?*

A. *No, I did not.*

Q. *How did you come to reverse full speed astern a minute before the collision?*

A. *Well, I knew there was going to be a collision or I was nearly certain of it'' (Ap. 289-90).*

* * * * *

“Q. *When you reversed full speed astern, you had not at that time seen this green light?*

A. *Yes, that is what made me reverse.*

Q. *By seeing the green light?*

A. *Yes.*

Q. *How long was that, did you say, before the collision?*

A. *About a minute'' (Ap. 295).*

What a commentary it is, if Gibbs' and the lookout's version be true, upon the efficiency of the watch maintained on the "Gualala"! On the one hand, we have the deck officer positively stating that upon swinging to starboard from a S.E. course so as to pass the "Argyll", whose red light he had seen a point and a half on his own port bow, he suddenly saw, when the "Gualala" was headed S.S.W., the green light of the "Argyll" come into view two points on his own port bow, although it must have been visible long before, the appearance of which caused him to reverse the "Gualala" full speed astern a minute before the collision, during which period of reversing the green light must have remained in full view. On the other hand,

the lookout, stationed in the eyes so as to give him an unobstructed view ahead, whose special duty it was to observe and report lights and signals, never, at any time, saw the green light of the "Argyll". The inefficiency of such a watch cannot be better characterized than by the following from

The New York, 175 U. S. 187; 44 L. ed. 126, 134:

"Her officers failed conspicuously to see what they ought to have seen, or to hear what they ought to have heard. *This, unexplained, is conclusive evidence of a defective lookout.*" (Italics ours.)

The discrepancy between the testimony of Gibbs and the lookout cannot be explained.

And yet the District Court condemned the "Argyll" as solely in fault, without a word of criticism upon the navigation of the "Gualala", because the lookout of the former did not report to the bridge a change in the "Gualala's" course, made known to the "Argyll" by a port passing signal, and because the mate of the "Argyll" did not remain stationary upon the bridge, with his eye fixed upon the "Gualala", which, by maintaining her course as the rules of the road required, would have passed in safety, starboard to starboard, although the mate paced the bridge as customary, watching first over one bow and then over the other, and, when the one blast of the "Gualala's" whistle came, indicating that she was going to wrongfully attempt to cross the bow of the "Argyll", he did the two things which might have possibly avoided the impending collision, threw his helm to port and reversed, and indicated them by proper signals, both of which maneuvers have,

under similar circumstances, met with the approval of our highest admiralty authorities!

The facts did not justify the exonerating of the "Gualala" and the condemning of the "Argyll", but, on the contrary, the "Gualala" alone should have been held responsible for the collision. The "Gualala's" version of the collision is untenable, for the collision could not have so occurred. It was caused by the wrongful porting of the "Gualala" when approaching the "Argyll", starboard to starboard, and for her error, we respectfully submit, the "Gualala" should be held solely in fault.

We respectfully ask that the decree of the lower court be reversed with instructions to dismiss, with costs, the libels against appellant, and for such other and proper relief as this honorable court may deem meet and proper.

Dated, San Francisco,

November 2, 1914.

Respectfully submitted,

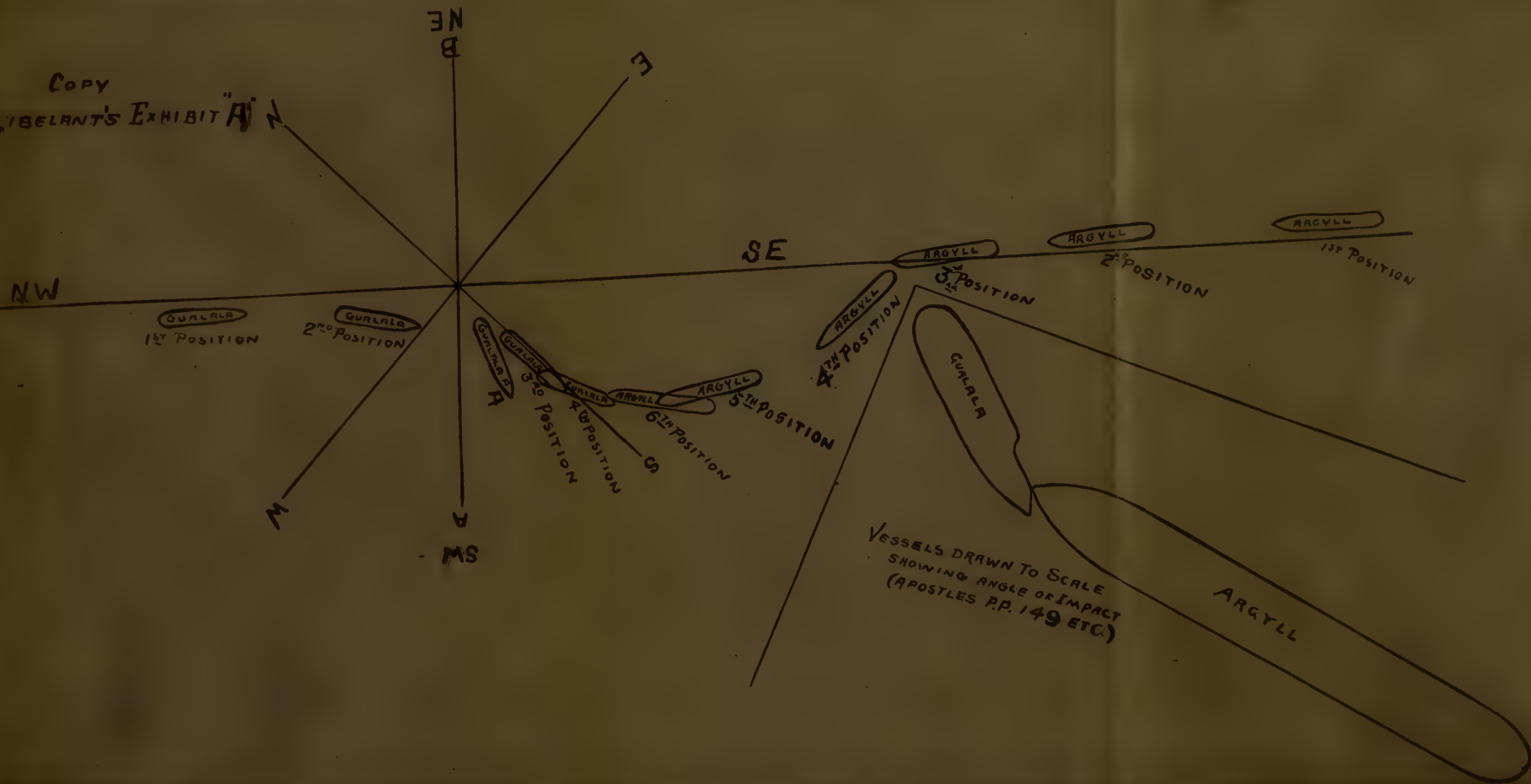
EDWARD J. McCUTCHEN,

IRA A. CAMPBELL,

McCUTCHEN, OLNEY & WILLARD,

Proctors for Appellant.

COPY
LIBELANT'S EXHIBIT "A"



CLIMENTS EXHIBIT F

8

Nos. 2473 and 2474

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

UNION STEAMSHIP COMPANY

(a corporation), claimant of the American Steamship "Argyle", her engines, boilers, etc.,

Appellant,

VS.

KONSTANT LATZ,

Appellee.

BRIEF FOR APPELLEES, ABRAHAMSEN AND LATZ.

F. R. WALL,

Proctor for Appellee, Latz.

S. T. HOGEVOLL,

Proctor for Appellee, Abrahamsen.

Filed this.....*day of November, 1914.*

FRANK D. MONCKTON, Clerk.

By.....*Deputy Clerk.*

Nos. 2473 and 2474

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BRIEF FOR APPELLEES, ABRAHAMSEN AND LATZ.

Supplemental Statement of Facts.

The amazing statement of facts made by appellant demands a supplemental statement.

There was conflict in the testimony, as there almost always is in collision cases. Upon some points, the conflict was violent. As to many of the other points, there was agreement. The following supplemental statement shows the absolute inaccuracy of some of the appellees' statements:

It is admitted that the lights of each vessel were burning brightly. There was practically no wind

and no sea. There was a haze or mist on the starboard side of the "Argyle" off to the eastward (Ap. 68, 120, 260, 305, 342, 358, 359); otherwise the night was clear.

McAlpine, the bridge officer of the "Argyle", testified:

At the time the 'Gualala' blew one whistle she was about 960 feet away (Ap. 48, 59). When I first saw the 'Gualala', after the lookout reported her green light, she was then about inside of a mile (inside of 6080 feet, if a nautical mile was meant; inside of 5280 feet, if a statute) (Ap. 53). (Afterwards he said $1\frac{1}{2}$ miles.) There was a slight alteration in the bearing of the 'Gualala' between the time I first saw her until her first whistle. When her red light was reported she had only changed her bearing one half a point (Ap. 59, 60).

Hansen, the lookout on the "Argyle", testified:

The 'Gualala' was about 960 feet away when she blew one whistle (Ap. 127). The 'Gualala' was not more than four ship's lengths of the 'Argyle' (1280 feet) away at the time I first saw her masthead light (Ap. 126, 127). (This was the first that was seen of the 'Gualala' from the 'Argyle'.) The vessels were not quite parallel, pretty near (Ap. 122).

It was about two or three minutes from the time that I first saw that light of the 'Gualala' until the two boats hit each other (Ap. 124). It was just after I had seen the 'Gualala' when she blew that one whistle. It was just an instant afterward (Ap. 127). She was about three ships' lengths away from the 'Argyle' when she blew that one whistle. I saw the 'Gualala's' red light *just after* she blew her whistle and that was just a matter of a few

seconds before the two boats came together (Ap. 129). The whole thing happened rapidly one thing after another after I saw the mast-head light (Ap. 131).

Torbjorsen, the quartermaster on the "Argyle", testified:

"I guess about one minute elapsed between the one whistle and the three whistles" (Ap. 137, 138).

Comstedt, the lookout on the "Gualala", testified:

"Until the whistle was blown on the 'Gualala', the 'Argyle' didn't change her position as to the bearing she was off our port bow" (Ap. 357).

The pilot house log and the ship's log of the "Argyle" show that the "Gualala" was first sighted from the "Argyle" at 2:59 A. M.; that the "Gualala" blew one whistle at 3:05, and that the collision occurred at 3:07 (see Exhibit and testimony). By the engineer's log of the "Argyle", the signal for full speed astern was given on the "Argyle" at 3:06 (Ap. 143). As the deck log shows that the collision occurred at 3:07, or two minutes after the "Argyle" blew her one whistle, this checks up the fact that the signal to reverse was not given until one minute after the one whistle.

The amazing part of appellees' statement is on page 3 of its brief. We do not understand that any of the matter set forth in the first paragraph on that page is "contended" for by any of the witnesses on the "Argyle". The only persons who

make that contention are counsel for the appellees. Most of those contentions are made in the face of the testimony of the witnesses on the "Argyle". It is contrary to all of the testimony that the "Gualala" blew a one blast passing signal, then ported her helm and turned across the course of the "Argyle", *exposing to the latter* both her side lights, then shutting out her red light, and leaving her green light alone, shortly after the "Gualala's" green light was seen from the "Argyle". Upon this point McAlpine testified:

Shortly after sighting the 'Gualala's' green light he (the 'Gualala') blew one whistle and ported his helm, and *then* I saw his red light (Ap. 47). He did *not* see the 'Gualala's' red light *at any time* prior to the receipt of her one whistle. Saw the red light almost immediately after the receipt of that whistle. When the one whistle was blown I saw her red light for the first time. I do not know how long that red light may have been in view before the 'Gualala' blew this whistle (Ap. 60, 61, 65). He never at any time saw the two side lights at the same instant (Ap. 82, 83).

So that, while the lights were exposed in the order mentioned by appellant to the *inanimate* "Argyle", it seems far from disingenuous for appellant to state this as a fact to the court, when the officer in charge of the bridge of the "Argyle" knew nothing of these exposures.

Upon this point Hansen testified:

That he sighted the 'Gualala's' masthead light and immediately thereafter sighted her green light; that he then saw the green light

and the red light together, but at no time did he report to McAlpine the seeing of these two lights together; that immediately after seeing them together, he lost sight of the green light, but still saw the red one; that he did not at any time report to McAlpine the losing sight of the green light or the sighting of the red light (Ap. 123, 124).

One of the other amazing statements in this paragraph of appellant's is that the "Argyle's" engines were instantly reversed full speed astern when she exchanged one blast passing signals with the "Gualala". This is a flat contradiction of the "Argyle's" own log and of the engineer's log, both of which show that at no time was the "Argyle" slowed, stopped or backed until one minute after the "Gualala" blew one whistle; also, it is a contradiction of the "Argyle" quartermaster's testimony that

"I guess about one minute elapsed between the one whistle and the three whistles. I got the order hard aport immediately after the one whistle" (Ap. 137, 138).

McAlpine testified that the officer on watch writes up the pilot house log for his watch, and that he never knew of any one else writing it up for him; that he does not remember whether or not he made any other entry in the pilot house log other than the entry, "2:59 lookout man reported green light on starboard bow two points". He did remember making this entry, although he did not remember making any other; that the pilot house log looked

to him as if there had been some entry there in his watch, and it had been rubbed out (Ap. 86, 87).

The entry in the "Argyle's" log book shows (see same) that after sighting the "Gualala", the "Argyle's" course was changed by half a point to port by putting her helm to starboard. McAlpine admits he gave an order to the quartermaster not to let that fellow come any closer (Ap. 79).

The "Gualala's" course, at the time she was struck, was somewhere between S. SE. and S. SW. (Ap. 316, 317, 318, 340, 346).

The "Argyle" was loaded, and in that condition it required somewhere between 4 to 8 minutes to stop her when going 8 knots an hour. As to her steering, while thus loaded, she was sluggish—slow to start, and hard to check after she got started.

It is admitted by all parties that both of the libelants Abrahamsen and Latz were not on watch at the time of the collision, but were asleep in their bunks underneath the forecastle, and received the injuries of which they complain without any fault on the part of either thereof.

Argument.

ASSIGNMENT OF ERRORS 1, 2 AND 10 ARE TOO GENERAL TO BE CONSIDERED BY THIS COURT

Rule 11, page 12, of the rules of this court provide that the assignment of errors shall set out separately *and particularly* each error asserted

and intended to be urged; and that errors not assigned according to this rule will be disregarded.

Assignments 1, 2 and 10 are, therefore, not exceptions or assignments; the particulars of the errors alleged to have been committed are not set out; the statements there are only expressions of opinion of counsel, and do not direct the court or us to any particular parts of the record. For example, assignment numbered "10" does not direct the court's or appellees' attention to any alleged fault on the part of the "Gualala". So that assignments 3, 4, 5, 6, 7 and 8 are the only ones to be considered. Similar assignments have been held to be insufficient in the cases of *The Natchez*, 78 Fed. 185, and *The Wyandotte*, 145 Fed. 321. In the former case, the court said:

"The second assignment is that the court erred in allowing certain claims in the libel which evidence adduced by the libelant did not substantiate. The general character of this assignment relieves us of any necessity to consider it."

The Natchez, 78 Fed. 185.

II.

THE COURT WILL NOT DISTURB THE FINDINGS OF THE COURT BELOW.

In these causes all of the testimony of appellants' witnesses was heard in open court, while that of some of the principal witnesses on behalf of appellees was taken by depositions, not in the presence of

the court. There is a mass of testimony in the record to support all of the findings. As to those points upon which the testimony was conflicting, the court, after seeing and hearing appellant's witnesses, chose not to believe its principal ones. We know we are speaking by the record and we think we are putting it mildly when we say that no one, after seeing and hearing McAlpine (the officer in charge of the deck of the "Argyle" at the time of the collision) testify, could have come to any other conclusion than that he was, as to many of the vital points of his testimony, entirely and utterly unworthy of belief. It will become obvious, therefore, upon reading the record, that appellant has advanced no reason why this court should violate one of its fundamental rules, the one against disturbing the findings of a trial court in such a case as this. (*Alaska Packers v. Domenico*, 117 Fed. 101.)

III.

THE "ARGYLE" WAS PRIMARILY AND SOLELY IN FAULT.

Upon this point, as upon all others, the "Argyle's" case must be determined principally from the testimony of McAlpine and Hansen. Never was a witness more thoroughly discredited than is McAlpine. In addition to the nature of his testimony on the stand and that given before the local inspectors of hulls and boilers, and of his manner

before the court, there is the incident of the pilot house log book, which was written into the ship's log book. It is asking too much of credulity to believe that he could remember making one entry regarding these important events and not remember whether or not he made a single other entry. Certainly in a matter of such vital importance he would have remembered. He says the log book looked to him as if other entries had been made and then rubbed out; and the conclusion is irresistible, both from his testimony and from the book itself, that the log has been tampered with; also, it must have been tampered with between the time of the accident and the time when the ship's log was written up in San Francisco after the vessel arrived there the day of the accident. These facts themselves leave the entire case of the "Argyle" under suspicion. As to his testimony and that of Hansen: It places the primary causative faults solely on the "Argyle" beyond question.

We wish to say, before going further, that throughout this brief we proceed upon the theory that the "Gualala" was first sighted by the "Argyle" a very little off the "Argyle's" starboard bow, practically dead ahead.

Appellant omits absolutely, as it did in the court below, all consideration of any of the testimony *showing the beginning of the "Argyle's" sinning*. That is, it still ignores those faults "causative of the collision". These faults were the negligence, before the exchange of the one whistle signals, of her

officer of the deck, McAlpine, and her lookout, Hansen, in:

Not seasonably sighting the "Gualala"; in McAlpine's assuming the two vessels were on parallel courses when there was practically no change in the bearings of the two rapidly approaching vessels; and in starboarding his helm and changing his course to port, while the vessels were rapidly approaching each other with the "Gualala" a little on his starboard bow, and without announcing this change of course to the "Gualala" in any way.

To consider properly the different parts of this proposition, we turn to certain fixed principles in the law of navigation. The one that leads all the rest, and which the courts have repeated to deaf ears with almost tiresome iteration, is: At sea, eternal vigilance is the price of safety. In the words of the International Rules of the Road it is expressed thus:

"Art. 29. Nothing in these rules shall exonerate any vessel or the owner or master or crew thereof, from the consequences of any neglect * * * to keep a proper lookout, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case."

26 Stat. L. 328.

The other provisions of these rules are:

"Art. 19. When two steam vessels are crossing, so as to involve risk of collision, the vessel

which has the other on her own starboard side shall keep out of the way of the other."

26 Stat. L. 327.

"Art. 23. Every steam vessel which is directed by these rules to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed or stop or reverse."

· 26 Stat. L. 327.

The testimony of McAlpine and of Hansen, in connection with these rules, convict the "Argyle" of the primary causative faults above set out.

The testimony of Lookout Hansen is most decidedly pointed. He says:

"It was *just after* I had seen the 'Gualala' when she blew that one whistle. It was just an instant afterward. She was about three ship's lengths away when she blew that one whistle."

That is damning evidence. But it must, in frankness, be said that in a case of this kind all estimates of time and of distance are unreliable, and must be tested by the ascertained facts. Where, though, is the court to go in order to determine when the "Gualala" was *first* observed from the "Argyle"? Of necessity, from Hansen to the discredited McAlpine, who says:

"The first I saw of the 'Gualala' she was then about inside of a mile."

Making due allowance for uncertainty in the estimate of this distance (and it seems likely that he would overestimate, rather than underestimate this

particular one) we have the "Gualala" *first* sighted at less than one-fifth of the distance at which her white masthead light should have been sighted. In other words, a vessel, loaded with a cargo that has been characterized by her witnesses as making her dangerous in the extreme in certain circumstances; and which vessel, her own witnesses say, is sluggish at first in responding to her helm, and takes 3 or 4 or 7 or 8 minutes to stop when going 8 knots—this vessel, going 8 knots an hour, allows, on a clear night, another vessel, also going 8 knots an hour, to approach within less than a mile without being sighted. The two vessels approaching each other at the rate of 16 knots would cover a mile in less than 4 minutes, or in about the same time, or less, than this death-dealing and self-dangerous instrument of commerce could probably be stopped. Here is negligence enough, particularly when taken in connection with what the Supreme Court says (*infra*) about the timeliness of precautions. But the court must go to McAlpine again. He says the vessels were on parallel courses and therefore there was no danger. He also says:

"There was a slight alteration in the bearing of the 'Gualala' between the time I first saw her $11\frac{1}{2}$ points off my starboard bow until her first whistle. One and a half minutes after and when her red light was reported she only changed her bearing $\frac{1}{2}$ a point." (His log shows he had ported $\frac{1}{2}$ a point.)

(Upon the subject of change of bearings the court is referred to: Note to International Rules, 26 Stat. L. 326; 112 Fed. 161; 199 Fed. 302.)

If McAlpine's testimony upon this point be true, then he was or should have been plainly advised before the "Gualala" blew one whistle that there was risk of collision; he was or should have been also thereby plainly advised that the vessels *were not on parallel courses*.

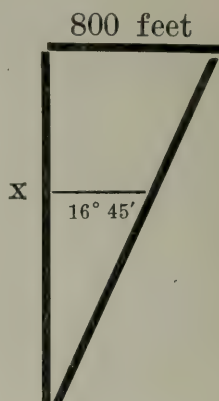
So, according to McAlpine, there was only a slight alteration in bearing from the time the "Gualala's" light was first sighted until just before the one whistle. And Comstedt, the lookout on the "Gualala" says that until the one whistle was blown on the "Gualala", the "Argyle" didn't change her position as to the bearing she was off the "Gualala's" port bow. Yet in the circumstances, with the "Argyle" changing her course to port under a starboard helm and keeping the "Gualala" on practically the same bearing, as soon as the "Gualala" blew one whistle the "Argyle" answered with one!

It is, of course, a matter of common knowledge that if the two vessels had been approaching each other on parallel courses at the rate of 8 knots, or 16 knots, the angle at which the "Gualala's" light would be seen from the "Argyle" *would increase rapidly*.

It is interesting in this connection to note that if the "Gualala's" light was *first* sighted $11\frac{1}{2}$ points off the starboard bow of the "Argyle" and the "Gualala" was then off to starboard of the "Argyle" $21\frac{1}{2}$ ship's lengths or 800 feet (the

average between McAlpine's 2 or 3 ship's lengths), then the "Gualala's" light could not, as a matter of mathematics, have been more than 2659 feet or .45 of a knot away from the "Argyle" when it was *first* sighted. This is determined by the solution of the right angle triangle:

$$\begin{aligned} \text{tangent } 16^{\circ} 45' &= \frac{800}{x} \\ \text{logarithm } x &= \text{logarithm } 800 - \\ &\quad \text{logtan } 16^{\circ} 45' \\ 800 \text{ log.} &= 2.90309 \\ \text{logtan } 16^{\circ} 45' &= 9.47852 \\ \hline \text{log } x &= 3.42457 \\ x &= 2658.1 \text{ feet} \end{aligned}$$



Of course, all due allowance must be made for this data being estimated data; but making such allowance, it hardly seems necessary to add anything further to show that there was lack of vigilance on the part of the "Argyle"; that such lack was a vital primary causative fault.

It is equally clear that the "Gualala" was not on a course parallel with that of the "Argyle's", and that it was primary causative fault for McAlpine to proceed on the theory that the courses were parallel.

McAlpine's oral estimate of 5 or 6 minutes between the collision and the time when the "Gualala" was first sighted and the log statement of 8 minutes

for that elapsed time still further clinch the above propositions; as it not even claimed that the "Argyle" was either slowed, stopped or reversed until after the one whistle, and the greater the elapsed time between first sighting the "Gualala" and the one whistle signals, the more glaring became the faults.

These were the primary causative faults of the "Argyle" before any maneuver whatsoever on the part of the "Gualala".

The "Argyle's" other primary causative faults are, in the order of their occurrence:

(1) *Hansen failed to report to McAlpine when the "Gualala's" green light and her red light were visible together.*

(2) *Hansen failed to report to McAlpine when Hansen lost sight of the green light and the red light only of the "Gualala" remained visible.*

(3) *The "Argyle" failed to slacken her speed or stop or reverse as soon as the red light and the green light of the "Gualala" became visible.*

(4) *The "Argyle" failed to slacken her speed or stop or reverse at once after the green light disappeared.*

These may, for the purposes of the argument, be considered together, and also with the rules of the road above stated, in connection with the testi-

mony of McAlpine and Hansen. We give the pertinent cases before proceeding to make any comment. They follow:

“There is ‘risk of collision’ whenever it is not clearly safe to go on.”

The Philadelphia, 199 Fed. 302.

“Precautions must be seasonable in order to be effectual, and if they are not so, and a collision ensues in consequence of the delay, it is no defense to allege and prove that nothing could be done at the moment to prevent the disaster, or to allege and prove that the necessity for precautionary measures was not perceived until it was too late to render them availing. Inability to avoid a collision usually exists at the moment it occurs, but it is generally an easy matter, as in this case, to trace the cause to some antecedent omission of duty on the part of one or both of the colliding vessels.”

Sieward v. The Teutonia, 23 L. Ed. 46-47.

“Errors committed by one of two vessels approaching each other from opposite directions do not excuse the other from adopting every proper precaution required by the special circumstances of the case to prevent a collision; as the Act of Congress provides that, in obeying and construing the prescribed rules of navigation, due regard must be had to the special circumstances rendering a departure from them necessary in order to avoid immediate danger.”

Miner v. The Sunnyside, 23 L. Ed. 304.

“Argument to show that nothing could have been done at that moment to avoid the collision is quite unnecessary, as the proposition is self-evident; but the fault consists in getting the two vessels into that dangerous situation. Pre-

cautions in such cases must be seasonable in order to be effectual; and if they are not so, and a collision ensues in consequence of such delay, it is no defense to allege and prove that nothing more could be done at the moment to prevent it and prove that the necessity for precautionary measures was not perceived until it was too late to render them availing.

“Inability to do anything effectual to prevent a collision at the moment it occurs, usually exists; but it seldom happens that there is much difficulty in tracing the cause which produced it to some antecedent neglect, carelessness or unskillfulness in those having the command of one or both of the vessels.”

The *America* v. Cam. and R. R. Trans. Co., 23 L. Ed. 726.

“It frequently happens in cases of collision that the master of the vessel could not have prevented the accident at the moment it occurred; but this will not excuse him, if, by, timely measures of precaution, the danger could have been avoided.”

The *Syracuse* v. Langley, 20 L. ed. 384.

“Her officers failed conspicuously to see what they ought to have seen or hear what they ought to have heard. This, unexplained, is conclusive evidence of a defective lookout.”

The *New York*, 44 L. ed. 134.

“The rule of navigation applicable to approaching vessels depends upon the actual situation of the vessels *at the time when the necessity for precaution begins*. Everything prior to that is immaterial, except as it may give each some knowledge of the other’s intention.”

The *Aurania* and the *Republic*, 29 Fed. 99.

“Considering the great interest of life and property at stake, a reasonable provision for safety against unexpected contingencies, and even against slight mistakes or errors in the navigation of either vessel, is plainly obligatory. No rational judgment, as it seems to me, can hesitate to pronounce it to be an unwarrantable risk to calculate so closely on one’s course that a momentary mistake or misapprehension of an order, or a brief and slight error on the part of either vessel, or a small unforeseen deflection from, an unexpected cause would be past all remedy and involve inevitable collision.”

The *Aurania* and The *Republic*, 29 Fed. 124.

“His fault was that which I have had so frequent occasion to comment upon, namely, not allowing a sufficient margin for safety, amid the contingencies of navigation, and not taking in time the decisive measures at his easy command. The *Laura v. Rose*, 28 Fed. Rep. 104; The *Aurania*, 29 Fed. Rep. 98. As I must find that the master had sufficient time and space to keep out of the way, had he acted with the promptness and decision that reasonable prudence demanded, and as there was no other vessel that prevented his doing so, the *Kelsey* must be found in fault.”

Wells v. Armstrong, 29 Fed. 218.

“Therefore, not only was the tug clearly in fault in the matter of a lookout, but the ordinary rule is applicable that, independently of the question whether or not the want of a lookout contributes to a collision, the fact of negligence in that respect, whenever there is a dispute like this at bar, necessarily preponderates with great force against the vessel deficient in that respect, in weighing proofs pro and con, unless they are capable of being recon-

ciled. This practical rule is only an application of the facts that the best disposed persons are prone to imagine theories to excuse the results of their own oversights, and that on the high seas the rapid occurrence of events, in connection with the approach of two colliding vessels at night, naturally leaves confusion in the minds of those who fail to maintain proper vigilance and a state of preparation, and who are, therefore, surprised by unexpected, sudden catastrophes. Taking the facts with reference to the lack of a proper lookout on the part of the tug, in connection with the allegation of libel that, when the green light of the schooner was sighted, the tug was too far ahead to starboard her wheel and go across the stern of the Dillaway, we cannot escape the conclusion that the tug was at fault."

The Samuel Dillaway, 98 Fed. 142.

"Rules of navigation, such as have been mentioned, are obligatory upon vessels approaching each other, *from the time the necessity for precaution begins*, and continue to be applicable as the vessels advance, so long as the means and opportunity to avoid the danger remain."

U. S. Mail Steamship Co. v. Rumball, 16 L. Ed. 148.

"The master also seeks to excuse himself by alleging that the Argo was so constructed that her headway could not have been stopped in time to be of any service. This may be true, and yet the Dumois should not be held responsible for the faulty construction of the Argo in this particular. While a steamer may be so built as to attain the utmost possible speed, she ought also to be provided with such means of stopping or changing her course as are commensurate with her great speed; and the very

fact of her being so fast and apparently uncontrollable is an additional reason for the greater caution of her navigation. Her increase of speed should have been obtained with as little increase of risk to other vessels as was possible, and if any precautions in that direction were neglected, it was a fault for which she alone ought to be called upon to respond. This court has repeatedly held the fault, and even the gross fault of one vessel, does not absolve the other from the use of such precautions as good judgment and accomplished seamanship require."

The *Albert Dumois*, 44 L. ed. 759.

"It is as clearly the duty of the officer of the deck, after a light is reported, to keep it in view and to watch its movements, and the effect of the movements of his own vessel taken with reference to it, as it is of the lookout to see and report a light that comes in view. The *Star of Scotia*, 2 Fed. Rep. 592."

The *Pangussett*, 9 Fed. 118.

"The second mate of the *Star of Scotia*, who was the officer responsible for the navigation, testifies that, when the red light appeared, it bore about two and a half to three points on his port bow. He testified, also, several times, with great positiveness, that it ranged with or a little abaft the port fore rigging, as he stood on the weather or port side of the wheel. This would be less than half a point. It is clear that if the latter statement be true the light was not brought well or safely on the port bow. Having brought the light on his port bow, so far as in his judgment made it safe to steady the wheel, and having given the order to steady, it was then his duty to watch the light as the two vessels approached. If his calculation was right, and he was safely to leeward, the red light,

provided the other vessel kept her course, *would have constantly broadened on the bow*; yet his testimony as to the movement of the light after it was first seen is very confused. He does not testify that it broadened at all on his bow. On the contrary, he always put it as ranging with the fore rigging, and he puts it there when it suddenly changed to green, and the other vessel was found under his bow. Yet, *if it did not broaden, he should have noticed it, and should not have been taken by surprise, as he was, by its sudden change to green.*"

Mircovich v. Bark Star of Scotia, 2 Fed. 592.

"The lookout on the Hansa failed to do his duty. He did not report the Transporter when he discovered her, on the ground, as he alleges, that he supposed the captain and pilot then saw her. This, of itself, was great negligence on his part. Nothing, under such circumstances, should be left to conjecture. He should have reported the steamer at once, and it is possible that his failure to do so may have prevented the Hansa from changing her course, as she otherwise would, or at least might have done."

The Hansa, 11 Fed. 451.

"Respondent's own testimony shows beyond controversy that the pilot, when notified by the lookout that there was a light ahead, went forward and looked at it for several minutes, and then went aft, saying the approaching vessel was going all right. Beyond question he ought to have observed that there was a necessity for precaution, as the lookout does not pretend that the brig would have passed to the leeward more than her length if she had kept her course. The distance of the vessels apart when the brig ported her helm was at least one hundred and

fifty yards, and it is not doubted that if the pilot had continued to watch her course as he should have done, the collision would have been prevented. Instead of doing so, however, he turned round and walked aft, virtually leaving the matter in charge of the lookout. He gave the order 'hard up', but it was too late to prevent the disaster. The excuse offered for the pilot is, that he had a right to keep his course; but rules of navigation were framed and designed to save life and property, and not for the purpose of promoting collisions. Such were the views of the supreme court long prior to the enactment of the steering and sailing rules, which expressly provide that nothing therein contained, shall exonerate any ship from the consequences of the neglect of any precaution required by the ordinary practice of seamen, or by the special circumstances of the case."

Lane v. The A. Denike, 14 Fed. Cas., pp. 1074-1075.

"Vigilance as well as experience is required of a lookout; and, if he is inattentive to his duty, it is no sufficient excuse to say that he was competent to perform the required service. No doubt the bark had a lookout; and the evidence tends to prove that he was competent; but his own testimony shows conclusively that he did not properly perform his duty after the mate came forward and returned aft. He admits that he could not tell whether, at that time, the steam tug was stationary or in motion; and he must have known that the mate left the fore-castle and went aft as ignorant upon the subject as he himself was.

"Suppose that was so, and there is no apparent reason to doubt it, then it was his plain duty, the moment he ascertained that the lights ahead were stationary, to have reported that

fact to the mate as the officer of the deck. Steamers in motion, the mate might think, would take care of themselves; but *the lookout could not know what the mate would think if he should be informed that the lights were stationary.*

“Lookouts, as he supposes, are not required to report the same light a second time, though he admits it might become the duty of a lookout to do so in case the circumstances were materially changed. *He did not make a second report in season to be of any avail, except, perhaps, to arouse the mate to a consciousness of his prior neglect in not making some effort to ascertain whether the lights ahead were stationary or in motion. “Whether a second report before the collision became inevitable would have dispelled the feeling of security manifested by the mate cannot be known; but it is clear that no such second report was made in season to enable the mate to adopt any effectual precaution whatever.*

“Culpable misconception as to his duty on the part of the mate, and inattention and carelessness on the part of the lookout, induced, perhaps, by the remarks of the mate that it was a steamer and that she would take care of herself, *were the primary causes of the neglect and omission of duty which led to the collision.*”

Miner v. The Sunnyside, 91 U. S. 208.

“An error in extremis cannot be urged in exculpation of a vessel whose prior negligence has brought about the situation in which a mistake in judgment is excusable.”

The Protector, 113 Fed. 868.

“Where one vessel is in fault sufficient to cause the collision, there is a presumption in

favor of the other vessel which can only be rebutted by clear proof of contributory fault."

The Oregon, 39 L. Ed. 914.

"This court has repeatedly held, following the Supreme Court, that a vessel which is primarily in fault for a collision cannot shift its consequences in part upon another vessel without clear proof of the contributing negligence or fault of the latter. Her own negligence sufficiently accounts for the disaster."

The Chicago, 125 Fed. 715-16.

"When a vessel has committed a positive breach of the statute, she must show, not only that probably her fault did not contribute to the disaster, but that it could not have done so. *Belden v. Chase*, 37 L. Ed. 1218. *The Beaconsfield*, 38 L. Ed. 661."

The Oregon, 39 L. Ed. 914.

Yet in the face of the law and the facts, counsel for appellant puts into cold type what he urged upon the court below, to wit (Br. 38, 39, 40):

"Hansen, the lookout, testified that he saw the mast headlight and immediately afterward the green light, at what he estimated to be three or four ship lengths off, a point and a half or two points on the starboard bow, both of which lights were immediately reported to the bridge (Ap. 119-22). The fact that the lights were not seen a greater distance off did not indicate want of diligence, for it may have been due to atmospheric conditions, of which there was at least some evidence from both vessels (Ap. 110-20, 259-6). Surely the foregoing shows a proper performance of the lookout's duty.

"What then happened? The 'Gualala' blew one whistle which was immediately answered, a fact established by a concurrence of testimony

from both vessels (Ap. 121-2, 262). What could that have meant to him, or to any lookout, other than that the presence and the intended change of course by the 'Gualala' were known to the bridge officer of his own vessel? Did his failure, then, to report a change of course, and a whistle showing such alteration, which was, on the admission of the 'Gualala's' witnesses, immediately answered, contribute to the collision? Most certainly not. And then what? What maneuver did the one whistle of the 'Gualala' indicate she intended making? Hansen knew, and any other seafaring man would have known, that it meant a porting of helm, and that such a change of course on the 'Gualala's' part would expose both her lights for an instant, and then shut out her green light and leave alone the red light. He knew from the answering of the whistle by the 'Argyle' that the bridge officer of the latter was alive to the proposed change of course, and its effect upon the 'Gualala's' lights (Ap. 131-32). Can he then be said to have been negligent and inefficient in not reporting both lights, the disappearance of the green, and then the red light alone, when he knew that his bridge officer was advised as to the situation? We submit not."

When the above was written, counsel for claimant was not ignorant of the fact that Hansen could *not* have known anything of the kind. Even had Hansen been a divine mind reader, he could not have known what was not so. Counsel knows that McAlpine testified time and again that he (McAlpine) *never, at any time*, saw the "Gualala's" red light until AFTER "Gualala's" one whistle was blown (see McAlpine's testimony as follows):

Shortly after (sighting the 'Gualala's' green light) he (the 'Gualala') blew one whistle and

ported his helm and *then* I saw his red light. I did *not* see the 'Gualala's' red light *at any time prior to the receipt of her one whistle*. Saw the red light almost immediately after the receipt of that whistle. When the one whistle was blown I saw her red light *for the first time*. I do not know how long that red light may have been in view before the 'Gualala' blew this whistle (Ap. 53-68).

So, *before* McAlpine saw the "Gualala's" red light, the "Gualala" had changed her course sufficiently to starboard under her port helm to open up her red light, so that both the red and the green were visible at the same time; the "Gualala" had, also, then turned still more to starboard, shutting out her green light and leaving only the red; and *after* that and *after* McAlpine heard the one whistle, McAlpine saw the red light and answered one whistle with one, nor did he know how long that red light had been been visible when he heard the one whistle.

In the face of this testimony, how in the name of common sense, could Hansen know that McAlpine was advised that the "Gualala" "would expose both her lights for an instant, and then shut out her green and leave alone the red light", when McAlpine knew nothing of what was going on?

As Josh Billings truly said, "'Taint ignorance that does so much harm in this world; it's knowin' so many things that ain't so."

Hansen never reported both lights together; he never reported the red light; McAlpine never saw

both lights together; he saw the red light *after* the "Gualala" blew one whistle.

In the case of the *Livingstone*, 113 Fed. 882, the change of course had not begun when the whistle was blown.

Claimant rests its case on still another alleged fact that is not a fact; and which, in one form or another, is repeated time and again by counsel for claimant. That is the statement that the "Argyle" was reversed full speed astern *immediately* after answering the "Gualala's" one whistle with one.

The "Argyle" is bound by her own logs (*The Utopia*, 1 Fed. 913); she cannot get away from them. *By her logs, one minute elapsed from the time that the "Argyle" gave one whistle until the signal to reverse was given.* In addition, the man at her wheel "guessed" that this time was one minute. He, more than any one else on the "Argyle", was in a position, in the wheelhouse, best suited to keeping a sense of proportion in the midst of the confusion incident to an imminent collision. By the pilot house log and the ship's log, the "Argyle" blew one whistle at 3:05; by the engineer's log the signal for full speed astern was given at 3:06. And here, too, was double fault on the "Argyle's" part:

1. In not knowing when both side lights became visible at the same time to Hansen and in not reversing and giving three blasts as soon as they were both visible.

2. In not reversing and giving three blasts as soon as McAlpine discovered the red light, if he then thought there was danger, instead of answering with one whistle and one minute thereafter reversing.

It is as certain as anything can be that if McAlpine had not been guilty of these faults, both Latz and Abrahamsen would now be able bodied seamen, instead of objects of charity.

Above are outlined the primary faults that caused the collision. The first of these, and the most important, was practically untouched by claimant. Why was this? All of the testimony in regard thereto comes from his own logs and his own witnesses. Any seeker after primary causative faults would not have had to go further; would not have needed to plot or diagram with hypothetical questions for basis, if the real object was to aid the court. We shall, therefore, look somewhat further into this testimony upon two other points.

The "Argyle's" log books show that it was eight minutes from the time any light was first sighted on the "Gualala" until the time of the collision, and six minutes from the time of this first sighting until the "Gualala" blew one whistle. During that six minutes, the "Argyle" kept changing or changed her course to port sufficiently to keep the lights of the "Gualala" on practically the same bearing, although the vessels were approaching at the rate of 16 knots an hour; during that time no two-whistle

signal was given by the "Argyle" to indicate that she was directing her course to port; there was no slowing or stopping or reversing or three whistles to change a situation charged with danger. Can it be said the "Argyle" was not neglecting the precautions required by the ordinary practice of seamen, or by the special circumstances of the case, or article 18?

If, then, anything like the time stated in the log book elapsed, the "Argyle's" primary faults began long before the "Gualala" blew one whistle. Those faults were the violating of articles 29 and 18, which latter reads as follows:

"Art. 18. Every steamship when approaching another ship, *so as to involve risk of collision*, shall slacken her speed, or stop and reverse, if necessary."

If, on the other hand, we accept Hansen at claimant's valuation, then claimant is worse off. Claimant says Hansen saw the lights as soon as they could be seen; that the fact they were not seen sooner "may have been due to the atmospheric conditions". Suppose this were so. It only proves that the fire is a bit hotter than the frying pan. If it were so, what business had a vessel, that required from 4 to 8 minutes to stop her, to go driving through the water at 8 knots an hour under atmospheric conditions that made it impossible for a vigilant and efficient lookout to sight the lights of another vessel before they were within 2659 feet of her? Hansen

says the distance was about 1280 feet, and we have shown that if the light was $1\frac{1}{2}$ points on the starboard bow and 800 feet to starboard at right angles, it must have been 2659 feet away. So, giving all the benefit to the "Argyle", we have this vessel, hard to stop, sluggish in steering (slow to start and hard to check), going ahead at 8 knots an hour under atmospheric conditions that made it impossible for a vigilant and efficient lookout to sight a masthead light until it was within a distance of from $\frac{1}{4}$ to $\frac{1}{2}$ a knot, a light that should have been visible on a dark night with a clear atmosphere at a distance of five miles. Could there be plainer violation of the rule requiring that

"Art. 16. Every vessel shall, in a fog, *mist*, falling snow, or heavy rainstorms, go at a moderate speed, *having careful regard to the existing circumstances and conditions?*"

The faults above enumerated do not require any consideration of theories or of expert testimony. They are primary faults established by the "Argyle" herself, *before the "Gualala" ever blew one whistle.*

Claimant's effort to show that the primary fault was the "Gualala's" porting not only ignores all of the "Argyle's" preceding faults, but is predicated and rests solely upon the statement that the "Argyle" reversed immediately upon hearing that whistle. We have seen that the fact is just the opposite. Therefore, the "Argyle's" excuse is the old "stereotyped excuse".

Whatever McAlpine says, the "Argyle's" logs show that he was satisfied there was plenty of room; that he acquiesced by answering with one whistle and by putting his helm from starboard to port and continuing at full speed for one minute.

Considering the above, there remains no loophole through which the "Argyle" can escape guilt for primary causative faults.

The circumstances required that a vigilant lookout should have sighted the "Gualala" long before she was sighted; that after she was sighted, and her bearing failed to change appreciably that the "Argyle" should have realized that the "risk of collision" existed and should at once have reversed. If she had done this no collision would have resulted.

Further, McAlpine should have seen the green light and the red light at the instant that they became visible together and, also, Hansen should have reported to McAlpine the instant these two lights became visible together (instead of never reporting them). At the instant these two lights were visible together, McAlpine should have reversed full speed astern. Had he done so, and ported his helm at the same instant, the collision could not have occurred, for his vessel would have swung to starboard and would necessarily have cleared the "Gualala". It was nearly an "end on" collision. Just a little more to the right, and what a difference to Latz and Abrahamsen! The "Argyle" cannot show that these faults probably did not cause the collision, nor that

they could not have caused it, for they were causative, each and every one of them. Nobody can tell with accuracy how long it was between the time when these two lights were visible and the time when the signal to reverse was given. McAlpine says that after seeing the green light he took 2 or 3 turns up and down the bridge (a distance across the ship of 60 or 120 feet) and *shortly after* he (the "Gualala") blew one whistle which he (McAlpine) answered with one. The time that it took to walk this distance, plus the "shortly after", is one of the things that caused Latz and Abrahamsen to be lamed for life.

The fault of Hansen in not reporting instantly the change from the green and the red together to the red alone is the same fault, with the time element lessened.

Claimant's theory of the collision, as set out in its answer, is that the two vessels had theretofore been approaching safely green to green, and the "Gualala" then deliberately departed from a safe course, put her helm to port and ran across the bow of the "Argyle", making a collision inevitable. That is not an unusual theory resorted to by the vessel in fault. Of it this court says:

"In *Haney v. Baltimore Steam Packet Co.*, 23 How. 287, 291, 16 L. Ed. 562, which was a case in admiralty, where the question raised was very similar to the case in hand, the answer admitted the collision, and the result of it, and it also admitted that the schooner

was seen at a distance of 2 or 3 miles; that the steamer was proceeding at a rate of 14 miles an hour, heading due north; and the schooner holding her course nearly due south; but it alleged as an excuse that, while the steamboat, and schooner were meeting on parallel lines, the schooner suddenly changed her course and ran under the bows of the steamer. The court said: 'This is the stereotyped excuse usually resorted to for the purpose of justifying a careless collision. It is always improbable and generally false.' "

The Dauntless, 129 Fed. 721.

THE EXCHANGE OF ONE WHISTLE.

The one whistle from the "Gualala" meant "I am directing my course to starboard". If the "Argyle" considered the maneuver unsafe, she should not have answered with one whistle; but should at once have reversed her engines and given three blasts of her whistle. That duty was all the more imperative, if McAlpine then regarded a collision as inevitable; for he could not know how easy or how difficult it was to handle the "Gualala", whose identity was then unknown to him. His blowing one whistle gave the "Gualala" no clew to his alleged conviction that a collision was then inevitable; just the opposite. By answering with one whistle, he plainly announced to the "Gualala", "I, too, am directing my course to starboard"; and it was only after he blew the three whistles, which were not heard on the "Gualala", that the

"Gualala" might have known that any other maneuver was contemplated. Further he had no such conviction, for it is the testimony of the wheelman on the "Argyle" that, "I guess about 1 minute elapsed between the one whistle and the three whistles"; and this is backed up by the "Argyle's" log books, the ship's and the engineer's log. So evidently there was a minute or about that, from the time the one whistle was blown until the "Argyle's" engines were reversed, and McAlpine could not have regarded the collision inevitable when he blew one whistle: if he did, his fault was the greater for not giving three blasts and reversing immediately.

The case of *The Lisbonense*, 53 Fed. 300, is the case that best fits this exchange of whistles. We quote:

"The initiative was taken by the *Lisbonense*, which sounded a one-blast whistle. Under the situation as she understood it, her duty was plain,—she was to keep her course. The international rules have provided for no signal whereby a vessel which intends to hold her course shall notify another of that intention. Article 19 provides as follows:

"'In taking any course authorized or required by these regulations, a steamship under way may indicate that course to any other ship which she has in sight by the following signals on her steam whistle, namely: One short blast to mean, "I am directing my course to starboard;" two short blasts to mean, "I am directing my course to port;" three short blasts to mean, "I am going full speed astern." The use of these signals is optional, but if they

are used the course of the ship must be in accordance with the signal made' " (p. 298).

"In this particular case, however, both sides concede that the manoeuvres attending the collision were had in waters where the international rules control" (p. 299).

"Had she directed her course to starboard the collision would not have happened; and while we cannot hold her in fault for not doing so, under the special circumstances, we are of the opinion that, knowing of their existence, she was in fault for announcing to a vessel not possessed of the same knowledge, a change of course which she could not carry out" (p. 300).

"The Lisbonense, receiving such an answer to her own whistle, was entitled to assume that the vessel giving it was not so affected by special circumstances that she could not manoeuvre so as to keep out of the way of the Lisbonense by directing her course to starboard. Even in the sense in which the signals were interpreted by both pilots, La Champagne's signal whistle was a promise not to interfere with the Lisbonense crossing her bows, whether by changing her own course to starboard or by checking her speed. * * * When he received the one-blast signal from the Lisbonense he had the option either to answer with two blasts, to keep silent, or to answer, as he did, with one. In the first case he would have distinctly advised the Lisbonense that, despite article 16, he considered the situation such that La Champagne could not keep out of her way; that he did not intend to do so by going to starboard; on the contrary, that he was going to sheer to port,—and thereafter the navigator of the Lisbonense would be charged with knowledge that La Champagne claimed to be navigating under the special circumstance rule, and expected

him to keep out of her way. Had La Champagne kept silent, the Lisbonense would at least have been warned by that circumstance that there was some uncertainty as to what the former intended to do. By answering with one blast she announced her intention to do the very thing she could not do. This was a fault. 'Courtesy' might require an answer to a signal, but certainly it did not call for an answer which, under the rules, governing her navigation, promised a manoeuvre which special circumstances forbade her carrying out" (p. 301).

APPELLANT'S CASES DISTINGUISHED.

Only a brief review is required of the cases cited by claimant, because they are not founded upon facts similar to those in this case:

In the case of the "Ping-On", the tug and her tow (the "Condor") first sighted the "Ping-On" from half a mile to a mile away, from 2 to 2½ points on her starboard bow; the tug and tow continued on a starboard helm; which was a course divergent from that of the "Ping-On", as indicated by the exposure of her green light. *It was soon perceived by the tug and tow that the steamer was changing her course.* The tug and tow, on perceiving this change of course, *blew two whistles to indicate that she was (they were) on her (their) starboard helm.* *To this signal the steamer replied by one whistle, indicating that she was porting* (11 Fed. 614 and 615). In other words, they crossed signals. The tug gave the signals she had

a right to give, and the "Ping-On" did not acquiesce, but answered with a signal she had no right to give.

In the "Roanoke" the sailing vessel, of course, gave no signal, but when very near changed her course across the bow of the "Roanoke"; the "Roanoke" had already slowed, and the engines were backed as soon as possible.

In the case of the "Eagle Wing" (two sailing vessels) there was no question about the fact that the "Eagle Wing" when nearly abreast of the "Hargraves'" bow suddenly shut in her own red light, showed her green for a few seconds, and ran into the "Hargraves" (p. 830).

In the case of the "Atlantic City", when the two vessels were not over half a mile apart, green to green, each gave a signal of two whistles, which neither heard. When they were probably not more than 300 feet apart, the "Glen" suddenly ported and sheered across the "Atlantic City's" bow. The "Atlantic City" at once stopped as soon as possible and reversed (143 Fed. 453). There was no question of acquiescing in signals.

In the case of the "Free State", the court says (23 L. ed. 301):

"Observing that the scow was sailing in the direction mentioned, the steamer starboarded her helm, thus bearing to the east of south. On these courses there was no risk

of collision with the scow: * * * the scow selected her course; and the steamer, acquiescing in that selection, took the suitable means to pass her in safety. * * * There was no risk of collision. * * * Subsequently, and when the vessels were within 300 feet of each other, and probably within three minutes of time, the scow changed her course and practically ran under the bows of the steamer. Then there was risk of collision, but not until then. *The steamer*, in this emergency, *did stop and reverse*; but the time was too short and the distance too small to prevent the catastrophe."

The "Manitoba" is strong in our favor and equally strong against the "Argyle" as the court's statement there shows (30 L. ed. 1098): 'The vessels were within from 400 to 500 feet of each other, the "Comet" being then from 200 to 300 feet on the starboard side of the "Manitoba", and if each had kept their respective courses, they would have passed without colliding; but the "Comet" then ported her wheel, displayed her red light, and suddenly sheered across the "Manitoba's" course. The "Manitoba" starboarded and the collision ensued. *Neither vessel sounded any signal of the whistle, indicating the side it intended or desired to take* * * * The "Comet's" intentions, in connection with all the surrounding facts, called for the closest watch, and the highest degree of diligence, on the part of both, with reference to the movements of the other; and it behooved those in charge of them to be prompt in availing themselves of any resource

to avoid, not only a collision, but the risk of such a catastrophe. * * * Each vessel misapprehended the purposes of the other. *It was this misapprehension on the part of said respective vessels, which might have been timely obviated by proper signals from either, that occasioned the collision.*

One of the "Argyle's" faults, like the fault of the "Khedive", was that she did not reverse immediately. That is all that need be said of the Stoomvort case.

The "Gualala" certainly knew that when her helm was put to port she would go to starboard. She also knew, after the "Argyle" answered, that the "Argyle" agreed to this maneuver. So the "Gualala" was under no misapprehension as to what she was doing or as to what the "Argyle" had agreed to. If the "Argyle" had answered with two whistles or with three, the "Gualala" might, under claimant's theory, then have gone forward with the maneuver at her own risk. In the circumstances, the risk was solely at the expense of the "Argyle". The "Gualala" knew nothing of the steering qualities of the "Argyle". The "Gualala" did not know that the approaching vessel was a leviathan of the deep, unwieldy, unhandy, hard to stop, dangerous to herself and to everybody else within a radius of at least half a mile. All that the "Gualala" knew or had to know was that the other vessel, knowing her own characteristics—limitations, defects, or abilities—agreed to the maneuver.

IV.

ALLEGED FAULTS OF "GUALALA".

The appellant cannot urge any of these alleged faults here, for the reasons following:

1. *There has been no assignment of errors in regard thereto, as heretofore pointed out.*

2. *The alleged faults were not urged in the court below, but are put forth here for the first time.*

3. *Appellant alleges in its answer (Ap. 15, 16) that the collision was due solely to the "Gualala" porting her helm and changing her course across the bow of the "Argyle" while the two vessels were on parallel courses, whereas the alleged faults are all based upon a period of time "AFTER he (the 'Gualala') first ported and gave the one blast passing signal" (Br. 50), which signal was answered at once by the "Argyle". In other words, the alleged faults relate to a period of time subsequent to the porting of the "Gualala's" helm and the alleged crossing of the "Argyle's" bow by the "Gualala", the only fault pleaded and pleaded as the sole cause of the collision.*

We think "1" and "3", as set out above, need no further comment; and as to "2" we wish to add only the following:

“The record does not show that any such objections were made in the court below at any time. The court never was called upon to decide this question. * * *

“In the present case it was not presented in any form or manner whatsoever in the court below, and cannot be considered by this court. *Wasatch M. Co. v. Crescent M. Co.*, 140 U. S. 293, 298; 13 Sup. Ct. 600; 37 L. Ed. 454.” *Paauhau, etc. Co. v. Palapala*, 127 Fed. 922. To the same effect *Lloyd v. Preston*, 146 U. S. 630.

LIBELANTS' CONCLUSIONS FROM ALL THE FACTS.

Controversy over the testimony of experts in this case would be more than futile, as there is in the record abundance of direct testimony from eye-witnesses to enable any court to find the necessary facts, without befogging its mind with theories of experts not based on all the facts. But we do wish to call the attention of the court to the remarkably fallacious manner in which appellant has evolved its theory.

It says that if Gibbs' testimony is not absolutely exact in all respects, the “Gualala” must have been guilty of primary causative fault. It ignores all the rest of the testimony in the case, including its own. It dwells insistently upon the fact that, at the time of the collision, Gibbs testified that the “Gualala” was headed S. SW. It ignores utterly and entirely the testimony of Carlson, the quartermaster at the wheel of the “Gualala”, who had the compass in front of him all of

the time, and whose testimony upon this point was as follows (Ap. 340):

“Q. Did you notice what course your vessel was heading at the time that the vessels came together?

A. Yes, south southeast.

Q. South southeast by your pilot house compass when they came together?

A. Yes,—just at the time they struck why then we were heading south southwest at the time, that was only through the pushing of the one vessel against the other.

Q. That was because the ‘Argyle’ pushed you farther around?

A. Yes.

Q. I mean just when they came together how were you heading before she pushed you around?

A. That was south southeast.”

It is fair to suppose, therefore, that just before the collision the “Gualala” was heading somewhere between S. SE. and S. SW.

Not only is that testimony ignored completely, but it is assumed as a hard and fast fact that the “Argyle” was sighted $11\frac{1}{2}$ points off the port bow of the “Gualala”. There is no more reason for making this assumption than there would be for assuming that it is a hard and fast fact that the “Gualala” was first sighted $11\frac{1}{2}$ points off the star-board bow of the “Argyle”. In fact, we feel sure the truth is somewhere in between. The court is governed by the undeniable and leading facts. It is not its province to find theories.

“It is quite plain that the statements of the schooner as to both course and bearing cannot

stand. Which one is to be rejected? Apparently the one which is most liable to error, and whose elimination will make the harmonizing of the remaining testimony easy * * * The testimony as to bearings is exposed not only to error resulting from imperfect memory, but also to error from careless and unskillful estimates. The witnesses testify from a recollection of an opinion formed by them, which opinion may not originally have been an accurate one."

The *Helen G. Moseley*, 128 Fed. 406-7, in which case the schooner was found to be without fault.

So here, libelants are not concerned with the absolute accuracy of courses or bearings, but with the undeniable facts to be gathered from *all* of the testimony, the laws of nature, and other surrounding circumstances. These will determine the manner in which the collision occurred. When *all* of the testimony on both sides is thus taken into consideration and carefully weighed, a theory can be evolved that will harmonize all of the material facts and be helpful to the court. We have tried to follow this method in developing

LIBELANTS' THEORY OF THE COLLISION.

Before outlining our theory, we wish to say it is made with the following considerations kept in view; very little reliance can be placed on estimates of times, distances and bearings, and neither ship will be condemned on those estimates alone (The

Great Republic, 23 L. Ed. 57); that it is impossible to estimate the bearing of a light at night closer than within a point, unless a compass bearing is taken (none was taken here); so that where the theory seems to demand it, colors and bearings must bend or give way to clearer-eyed facts.

Before any trouble began, the "Argyle" was steering NW. $\frac{1}{2}$ W. and the "Gualala" SE. The range lights (the two white lights, one forward, one aft) of the "Argyle" were sighted from the "Gualala", bearing a little off the "Gualala's" port bow: nearly ahead; certainly less than $1\frac{1}{2}$ points. The "Gualala", like all steam schooners when loaded, yaws or swings a good deal on each side of her course when steering, even in the best weather (see testimony of Younger Dickie and of Curtis). This, of course, would add to the other difficulties of determining with accuracy the bearing of any light from the "Gualala". These range lights of the "Argyle" were sighted by the "Gualala" 4 or 5 minutes before the collision. After seeing these range lights, the "Gualala" sighted the "Argyle's" red light practically right ahead, and would, without doubt, then have seen the "Argyle's" green or starboard side light at the same time but for the fact that there was a slight haze or mist along the "Argyle's" starboard side almost up to the "Argyle's" masthead light, and extending off toward the horizon on the "Argyle's" right. It is well known that the visibility of the green light is much more easily

affected than that of the red. The range lights of the "Argyle", until her red light was sighted, had remained nearly in line, so that the "Gualala" knew the "Argyle" was approaching practically head on.

The first light seen from the "Argyle" by McAlpine was the "Gualala's" green side light. The "Argyle" was much higher out of the water than the "Gualala" and the atmosphere over toward the "Gualala" was clearer; so the "Gualala's" white light should have been seen the regulation distance. It is demonstrable that when the green light was first sighted by McAlpine it was not $11\frac{1}{2}$ points on the starboard bow, but at a very much more acute angle: or else it was such a short distance away from the "Argyle" that the failure to discover it earlier was criminal. To illustrate:

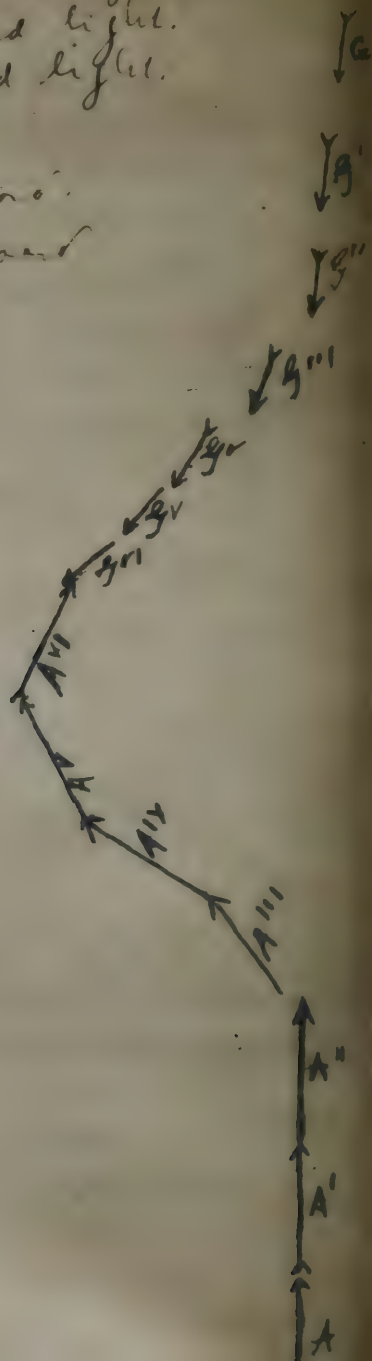
If this light was only a nautical mile away when first discovered and was then 800 feet off to the right at right angles with the "Argyle's" course, it would have been seen at an angle of $7^{\circ} 30'$ or $\frac{2}{3}$ of a point off the "Argyle's" starboard bow. If it was seen 8 minutes before the collision, it then must have been about two miles away. This green light would, at a distance of two nautical miles away and 800 feet off to the right have been seen at an angle of $3^{\circ} 45'$ or $\frac{1}{4}$ of a point off the "Argyle's" starboard bow. (If the distance away was inside of a mile before the light was discovered, it might have been $11\frac{1}{2}$ points on the starboard bow, but it would have

been criminal carelessness to let it get that near without discovering it and the white light earlier.)

So if the green light was sighted from the "Argyle" anywhere between 1 and 2 miles away and inside of $2\frac{1}{2}$ ship's lengths off at right angles to the "Argyle's" course, then it must have been sighted from $\frac{1}{4}$ and $\frac{2}{3}$ of a point off the "Argyle's" starboard bow. (In this connection, it must be added that nowhere in the testimony is there anything to indicate that the "Gualala" was, when first sighted, more than 2 or 3 ship's lengths to the right, and this distance would be decreasing slightly all of the time.) So between one and two miles away the angle would have been between $\frac{1}{4}$ and $\frac{2}{3}$ of a point. It is a commonplace of observation that a man, standing on the starboard end of the "Argyle's" bridge would see a light that was really $\frac{1}{2}$ or $\frac{3}{4}$ of a point on his port bow as if it were ahead or a little on his starboard bow; that if standing on the port end of this 40-foot bridge, he would see a light that was really $\frac{1}{2}$ or $\frac{3}{4}$ of a point on his starboard bow as if it were ahead or a little on his port bow.

After the "Gualala" saw the "Argyle's" red light, the "Gualala" gave one whistle and ported her helm and began to swing to her own right. Before that, the "Argyle" had starboarded and had begun to swing to her own left under the influence of her starboard helm and swung much farther than the $\frac{1}{2}$ point put down in the "Argyle's" log

- $t = A$. before he sighted lights were sighted.
 $t' = A$. when G sighted A's range light.
 $t'' = G$. when A's range light were sighted.
 $t''' = G$. when ~~the~~ green light was sighted by A.
 $t'''' = A$. when she sighted G's green light.
 $t''''' = G$. when she sighted A's red light.
 $t'''''' = A$. when G sighted A's red light.
 t''''''' and A'' = A turning to port.
 t'''''''' and A''' = A turning to starboard.
 t''''''''' and A'''' = G turning to starboard.



book. She was sluggish in starting and hard to check; also, the "Gualala" had been kept on practically the same bearing up to the time of the first whistle. And McAlpine says that he did not at any time prior to the collision take any particular notice of the bearings or change in bearings of the "Gualala's" lights. As soon as the "Argyle" got the one whistle from the "Gualala", the "Argyle" shifted her helm to hard aport; but as she was swinging to her own port under the influence of her starboard helm, she had to counteract that influence before she started to come around to her own right under her port helm; and it was while she was coming around to the right under her port helm that she struck the "Gualala" (which was still swinging on her port helm) at an acute angle.

Of course no diagram can do more than give in the roughest sort of way an idea of the whole of the moving picture, showing from a time just prior to the first observation until the collision; but in a rough sort of way the different stages of the situations were as shown in diagram inserted opposite.

Summary.

It is submitted that the testimony of the log books and of those in charge of the "Argyle", without resort to experts, show the "Argyle's" faults to be as follows:

1. *The "Gualala's" lights were not seasonably sighted.*

2. After a light was first sighted by the "Argyle" on the "Gualala", the "Argyle's" helm was put to starboard and the "Argyle" changed her course over to port. That even with this change to port, McAlpine kept the vessels on practically the same bearings from each other, although they were approaching at the rate of a little more than 16 knots an hour. To do this he must have been starboarding his helm.

3. After the "Gualala's" green light was sighted by Hansen and reported to McAlpine, Hansen did not report sighting the two side lights when both were visible together or the shutting in of the green light, leaving only the red light visible.

4. That McAlpine at no time saw the two side lights when both were visible together; at no time did he see the green light shut in.

5. That AFTER the green light came into view and after both side lights were visible together and AFTER the green light had been shut in and the red alone left visible and after the "Gualala" had blown one whistle, McAlpine THEN, FOR THE FIRST TIME, SAW THE "GUALALA'S" RED LIGHT. He did not know how long the two side lights were visible together, nor did he know how long

the red side light alone was visible BEFORE his attention was called to it by the "Gualala's" one whistle.

6. *After the "Gualala's" one whistle was blown, McAlpine acquiesced therein by putting his helm to port and answering that whistle with one whistle, and then continued under full speed with his helm aport for a period of one minute.*

7. *That McAlpine did not slow, stop or back until one minute after answering one whistle with one. At no time did he give any alarm signal.*

If the atmospheric conditions were such that Hansen's testimony is to be taken, instead of the entries in the log books, deliberately made immediately after the accident, then the "Argyle's" case is this:

This vessel of great tonnage, sluggish in her steering—slow to answer her helm but swinging rapidly and with great momentum after she once began and therefore hard to check—this vessel, that could not be stopped in less than from 4 to 8 minutes, was driven through the water under such atmospheric conditions that she was unable to see the first light (admittedly in good condition and properly burning) until the two vessels were within from $\frac{1}{4}$ to $\frac{1}{2}$ of a mile of each other.

We do not see how the testimony of all of the other witnesses on both vessels (as to the distance at which four lights were sighted) can be set aside, in favor of Hansen; but if it can be done, then the fault of the "Argyle" was both primary and criminal, for running, in all of the circumstances, at the rate of 8 knots an hour.

We respectfully submit that the faults of the "Argyle" are, upon claimant's own showing, obvious, primary and sufficient in themselves, to account for the collision; that she was solely in fault, and that the decree should stand.

Dated, San Francisco,

November 9, 1914.

F. R. WALL,

Proctor for Appellee, Latz.

S. T. HOGEVOLL,

Proctor for Appellee, Abrahamsen.

4
No. 2473

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

UNION STEAMSHIP COMPANY
(a corporation), claimant of the American Steamship "Argyle", her engines, boilers, etc.,

Appellant,

VS.

KONSTANT LATZ,

Appellee.

BRIEF FOR THE GUALALA STEAMSHIP COMPANY.

IRA S. LILLYCK,

L. A. REDMAN,

Proctors for The Gualala Steamship Company.

Filed this day of November, 1914.

Filed

NOV 9 - 1914

FRANK D. MONCKTON, Clerk

By F. D. Monckton, Deputy Clerk.



No. 2473

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

UNION STEAMSHIP COMPANY

(a corporation), claimant of the
American Steamship "Argyll", her
engines, boilers, etc.,

Appellant,

vs.

KONSTANT LATZ,

Appellee.

BRIEF FOR THE GUALALA STEAMSHIP COMPANY.

The statement of the case, as presented by appellant upon pages 1 to 5 of its opening brief contains upon page 3 a purported statement of the facts testified to by the witnesses for the "Argyll". This statement is, however, if not at variance with the testimony, at least silent as to several most important particulars which, considered in their relation to the other facts in the case, fully support the decision of the court below.

Counsel for appellant has omitted to state that, upon the trial, McAlpine, the third mate of the

“Argyll”, and the officer in charge of her at the time of the collision testified (Ap. 53) that when the “Gualala” was first reported to him and he first saw her she was inside of a mile away and that when examined under oath before the U. S. Inspectors (Ap. 5-7) the same witness testified that when he first saw the “Gualala” she was three miles away.

From the statement of the “Argyll’s” case by its counsel, the court would infer that, within the time it takes to write it, those on the “Argyll” first saw the range lights of the “Gualala”, then her green light and that, shortly afterward, the “Gualala” blew a one blast passing signal, ported her helm, and turned sharply across the course of the “Argyll”. As a matter of fact, McAlpine testified (Ap. 58) that it was from five to six minutes from the time the first saw the lights of the “Gualala” to the time of the impact between the two vessels; that (and the lower court so found) (Ap. 366) during this time, when the “Gualala” was almost dead ahead, this same officer in charge of the “Argyll” failed to notice any change in the lights of the approaching steamer, did not observe when, nor for how long, her green light and red light both showed, nor when her red light first came into view, did not see it at all until warned by her whistle (Ap. 65), and after first seeing her simply directed the man at the wheel of the “Argyll” “not to let her come any closer” (Ap. 79), and paid no further attention to

her until the one whistle from the "Gualala" called his attention to her again.

Another most significant fact, sufficient of itself to warrant an affirmance of the decree of the District Court, and not mentioned in appellant's statement of the case, *six minutes elapsed from the time the lookout reported the lights of the approaching "Gualala" until she blew the passing signal of one whistle* (Ap. 69).

We shall again advert to these facts in commenting upon others not referred to by appellant, but of the utmost importance in determining who was responsible for the collision.

It is claimed by appellant that the District Court in its opinion *impliedly* found that the version of the collision given by the officers and crew of the "Argyll" was the true one. We do not so read that opinion. The court stated that the testimony was so voluminous and conflicting that it could not find the requisite time to review it (Ap. 367).

Counsel for appellant, in this court, as they did in the District Court, base their defense upon a theory of "the conditions which must have brought about the collision". This theory of counsel is based, not upon the testimony of those who actually witnessed the collision, but upon an elaborate diagram drawn by an expert who was called upon in cross-examination, not to explain the collision but

to draw certain lines, courses and distances to prove counsel's *theory* about the collision to be correct.

This is a case in which we need neither elaborate diagrams, nor expert testimony, to fix the responsibility for those primary faults, which, in the language of the court in *Belden v. Chase*, 150 U. S. 674; 37 L. Ed. 1218, are themselves "sufficient to account for the disaster".

Almost the entire brief of the appellant is devoted to an attempt to "raise a doubt with regard to the management of the other vessel" (the "Gualala"), and no attempt is made to explain, or distinguish the facts as found by the opinion of the District Court, from which that court came to the conclusion that the "Argyll" was responsible for the collision. Yet, considering the testimony as a whole, counsel for the claimant was compelled to make this attempt "to raise a doubt with regard to the management of the "Gualala", for no justification can be offered for the conduct of McAlpine, the officer in charge of the "Argyll", and Hansen, her look out, during the few minutes before the collision—no explanation can be made which will excuse them for their almost criminal carelessness and neglect. Their "negligence sufficiently accounts for the disaster". Counsel for appellant is unable to justify it, and, in consequence, asks this court to reverse the decree of the lower court (based, as it is, upon the testimony as a whole, and the lower court's opportunity to observe the witnesses and note their

appearance and manner while testifying), and substitute for it a decision which would have to have for its foundation an elaborate theory supported only by the views of experts, instead of that of witnesses to the collision.

We think it proper at this point in our reply to refer to that well-established rule in admiralty, that the decision of the lower court, so far as it is based upon the facts, will not be reversed, or disturbed, unless it *clearly* appears that there was error. This rule has been followed by an unbroken line of authority in this and other circuits.

Whitney v. Olsen, 108 Fed. 292;

Alaska Packers' Ass'n v. Domenico, 117 Fed. 99 (9th Circuit opinion by Judge Ross);

Baker-Whiteley Coal Co. v. Neptune Nav. Co., 120 Fed. 247;

The Oscar B., 121 Fed. 978;

Paaauhau Sugar Plantation Co. v. Palapala, 127 Fed. 920 (9th Circuit);

Coastwise Trans. Co. v. Baltimore Steam Packet Co., 148 Fed. 837;

The Phila. B. & W. R. Co. v. The Southern Trans. Co., 205 Fed. 732;

Davis v. Schwartz, 155 U. S. 631; 39 L. Ed. 289.

An examination of the opinion of the lower court (Ap. 367) shows how squarely the decree rests upon the facts in the case. The opinion consists wholly of findings of fact. Findings of fact from the tes-

timony offered by the respective parties in a case in which the court quite properly commented upon its conflicting character. All of the witnesses produced by appellant were examined in open court and the court had the opportunity to judge of the credibility of these witnesses from their manner while testifying and their demeanor while under cross-examination. From appellant's assignment of error it is apparent that this court is asked to set aside the decree of the lower court on the ground that the lower court incorrectly decided questions of fact depending upon the credibility of the witnesses who testified before him.

In a case of this character, Judge Goff, speaking for the Circuit Court of Appeals, in the case of *The E. Luckenbach*, 93 Fed. 841, said:

“There is the conflict in the testimony usually found in cases of collision, the contending interests being diametrically opposite in their claims, as well as in the testimony their respective witnesses have given relative thereto, * * * the material witnesses on both sides testifying before the judge who decided the case below. Unless we find from the record that the decision is clearly against the evidence, we will not, as the questions of fact are to be ascertained from conflicting testimony—reverse the decree of the judge in whose presence the evidence was given, who observed the witnesses and noted their appearance and manner, and who was thereby aided in determining as to their credibility. The conduct of the witnesses when being examined, their demeanor under cross-examination, and their personal characteristics are material, and, unfortunately, can-

not be carried into the record. Consequently, the rule prevails in cases like this that the decree of the trial judge will not be disturbed upon mere questions of fact depending upon the credibility of witnesses who testified before him, unless there is found to be a decided preponderance of evidence against the same."

This principle can be especially invoked in the present case, for the reason that all of the witnesses for the "Argyll" were examined in the presence of the District Judge and their testimony was not only full of contradictions, but at variance with that of each other and unsupported by the inherent probabilities of the case.

Much of the argument of counsel for the appellant is based upon the assumption that *three* facts (stated upon page 7 of their brief) are admitted. Other facts, fully as important, were admitted as true. A few of them are:

(1) The lights of the "Gualala" could have been seen from the "Argyll" before they actually were;

(2) The two side lights of the "Gualala" could have been seen from the "Argyll" long before they were;

(3) Neither lookout nor mate upon the "Argyll" observed the green light on the "Gualala" disappear and the red light remain in sight;

(4) McAlpine first saw the "Gualala's" red light when her one whistle called his attention to her again;

(5) McAlpine did not know how long this red light had been observable from the "Argyll" before he looked up when he heard the one blast;

(6) After seeing the lights of the "Gualala" the course of the "Argyll" was changed to port;

(7) When the course of the "Argyll" was changed to port the man at the wheel was directed not to let the "Gualala" "come any closer";

(8) McAlpine admitted that it looked to him as if some entry had been made in the pilot house log of the "Argyll" in his watch, and it had been rubbed out;

(9) The "Argyll" neither slackened her speed nor reversed when the red light, together with the green light of the "Gualala", became visible, nor when the green light went out and the red light alone remained visible.

Conceding that all these facts are true, and they are all taken from the testimony of the witnesses produced by claimant, what becomes of appellant's elaborate argument based upon the diagram made by Captain Curtis under the skilful cross-examination of the astute counsel for appellant? We have from the statements of the witnesses produced by appellants a perfectly reasonable and logical explanation of how the collision occurred and an absolute demonstration of the faults committed by those in charge of the "Argyll". The salient facts which we have enumerated are of such a char-

acter as to fix upon the "Argyll" the sole responsibility for the collision.

Counsel for the appellant base their argument that the "Gualala" was in fault upon the contention that the appellant has demonstrated that the vessels could not have come together at an angle of 30° from ahead when the "Gualala" was headed S. SW. if the vessels were approaching each other prior to the "Gualala's" first alteration of course so that the "Argyll" was one and a half points on the "Gualala's" port bow and showing her red light to the latter, while the "Gualala" was on a SE. course. The "demonstration" claimed by our adversaries, however, is a "demonstration" based upon the false premise that the "Argyll" at no time prior to the collision changed her course. The appellant cannot be allowed to disregard the order given by McAlpine to the man at the wheel, "Don't let him come any closer"; nor the telltale entry in the log book of the "Argyll", "Altered course $\frac{1}{2}$ point to Port". The "demonstration" ignores these two fatal admissions. We think that there can be no question but that the "Argyll" from 2:59, when the lookout reported the lights of the "Gualala", gradually changed her course to port up to a few moments before the collision at 3:07, and then, too late, changed her course to starboard, covering as she did so a course approximately thus:



The diagram drawn to chart with accurate statement of time and distance, based upon the testimony, is given in "Libelant Beadle's Exhibit No. 4", (copy appended), to which we respectfully refer the court for an accurate estimate of the respective courses of the two vessels.

Even the expert witnesses relied upon by appellant had to admit, upon cross-examination, that, notwithstanding their answers to the involved hypothetical question asked them, in which appellant sought to show that the "Gualala" suddenly changed her course and ran across the bow of the "Argyll", that, if the "Argyll" *did* change her course first to port and then later to starboard that it was possible for her to have gone over a course which they described as a letter "S" (but which in reality would have been only a segment of the letter), which would have placed her directly in the course of the "Gualala" as described by her officers.

Curtis, chief officer of the "Argyll" (Ap. 148):

"Q. But if during that swing, if such a swing was on and made by the 'Argyll', and the helm of the 'Argyll' had been suddenly put to port, she would have turned and met the other vessel head on, would she not?"

A. In time she would, yes.

Q. And it depends altogether upon the time that elapsed between the various changes of her course?

A. Most assuredly."

←NW

C

Position of Gualala 1 1/2 minutes before collision
 also MYALPINE PAGE 28
 Position of Gualala 1 1/2 minutes before collision
 also MYALPINE PAGE 28
 Position of Gualala 1 1/2 minutes before collision
 also MYALPINE PAGE 28

1 WHISTLE 1 1/2 MINUTES AFTER SIGHTING
 MYALPINE PAGE 28

POSITION OF "GUALALA" WHEN 1 1/2 MINUTES OFF COURSE

POSITION AT THE TIME OF COLLISION

APPROX DIST VESSELS PASSED
 IF KEPT ON ORIGINAL COURSE
 MYALPINE PAGE 28

POSITION AT THE END OF 2 1/2 MINUTES
 REVERSING ENGINES
 REVERSING ENGINES

DIAMETER OF CIRCLE OF SWING USING MR J DICKIE'S
 FIGURE OF 1800 FT OR 5760 TIMES ARCYLL'S LENGTH

POSITION AT THE END OF 1 1/2 MINUTES ON NEW COURSE
 ANSWERED AND HELM ORDERED HARD A PORT AND ENGINES REVERSED

A

MYALPINE POSITION 4 MINUTES BEFORE COLLISION
 MYALPINE PAGE 28

E

ARCYLL ASSUMED POSITION 1 1/2 MINUTES AFTER
 SIGHTING "GUALALA" THIS POSITION REACHED BY NEW COURSE
 AND MYALPINE'S INSTRUCTIONS TO HIS HELMSMAN "DON'T COME ANY CLOSER"
 PAGE 47

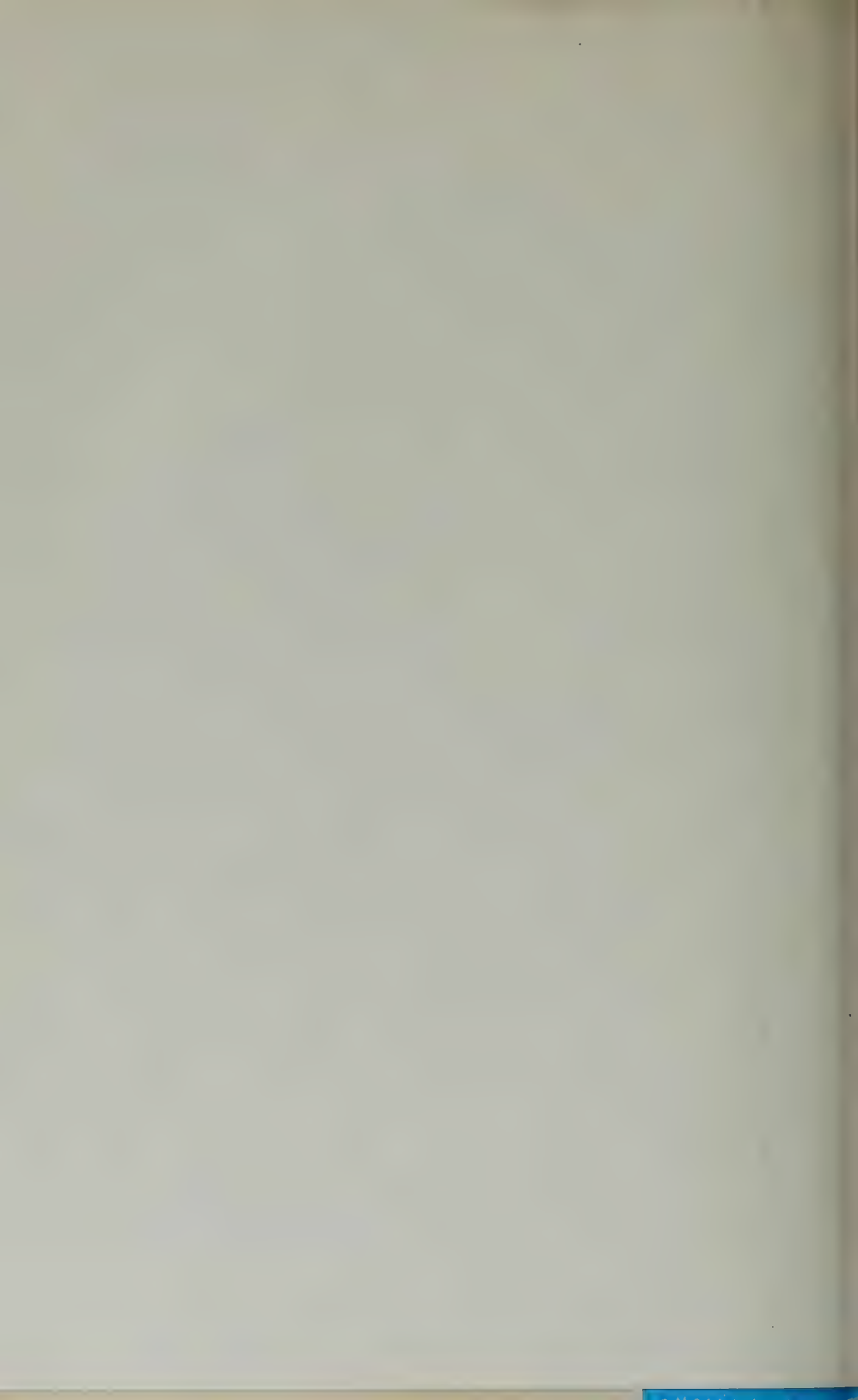
USE
 SCALE
 1/2" = 100 FT

B

COURSE ARCYLL WOULD HAVE TAKEN IN MY JUDGEMENT BASED ON MY KNOWLEDGE OF
 HOW SHE HANDLES UNDER CONDITIONS AS SHOWN DURING THE LAST 2 1/2 MINUTES

SCALE
 OF
 REPRODUCTION
 500 FEET

NO 15327 15329-15335-15458
 "ARCYLL GUALALA"
 LI DREDGES EXHIBIT NO 4
 800 - *James Hill*
 DEPUTY CLERK



Capt. Pillsbury (Ap. 163):

“Q. Starting with the position of the ‘Gualala’ a point and a half off the starboard bow of the ‘Argyll’, the officer in charge of the ‘Argyll’ making up his mind to keep the light in the same position now, and assuming also that the ‘Gualala’ commenced to change her course to starboard, would the ‘Argyll’ in order to keep that light in that same position not have changed her course to port?

A. Yes.

Q. She would have to change her course to port?

A. Yes.

Q. And if during the course of the maneuver and while the two vessels were approaching each other at the rate of 8 knots per hour, and the officer of the ‘Argyll’ suddenly realized the imminence of danger and changed his course from the port course to starboard, putting his wheel hard aport, it could have accounted for the position in which these two vessels struck each other, could it not?

A. If he had not gone too far.”

Capt. Ferris (Ap. 180):

“Q. And you don’t think it would make any difference whether the ‘Gualala’ was on the port or starboard side of the ‘Argyll’ during all of this maneuver as to whether or not the collision might have happened in the way it did?

A. If she were a point and a half on the bow and the ‘Argyll’ *had kept her course or put her helm to port* then the chance of collision as I see it was great, but if her helm had been hard to starboard then the chances were diminished greatly.

Mr. REDMAN. Q. You say hard to starboard?

A. Yes, sir.

Q. There is no evidence she put it hard to starboard.

A. I say assuming it was.

Q. Suppose it was not hard to starboard, suppose she was put one half point to port and then ran that way for 8 minutes?

A. The 'Gualala' would have hit the 'Argyll'.

Q. There would have been a collision then?

A. Undoubtedly."

Gibbs' explanation of the collision is criticized by appellant, and yet David W. Dickie, the expert of appellant, testified (Ap. 172):

"The angle which Mr. Gibbs gave and the time which Mr. Gibbs gave and the speed which he gave harmonized very closely, so closely that I assumed they were all correct in the laying down of Mr. Gibbs' courses of the 'Gualala'.

Q. The point I am seeking to bring out is this: leave out his conclusion that he had turned his vessel 6 points, did the other testimony given by him corroborate that conclusion?

A. Yes, sir."

In fact, Mr. Dickie went so far in his testimony as to state that Gibbs' times and his angles of courses as given agreed, and the only thing he was out in was the distance between the two vessels.

Estimates of distance at sea are always uncertain on account of the object under observation not being in such a position as to enable the observer to check the distance or compare it with the distance the object may be away from a known landmark. This is particularly so at night when the object observed is a light and the size and bril-

liancy of the light is not known. It seems to us that in checking up Gibbs' testimony it speaks well for its accuracy and reliability when the experts can find nothing to criticise in it but the distances given by him. In fact Mr. Dickie said (Ap. 170):

"I am not criticising Mr. Gibbs because his judgment as to the distance away is probably an error. This diagram seems to indicate that the 'Argyll' was on the starboard bow of the 'Gualala' and not on the port bow as they testify. I came to the conclusion that that was probably accounted for by yawing of the 'Gualala' (the reporter wrote 'Argyll', but the witness meant 'Gualala') coming down the coast with a following sea."

This "yawing" of the "Gualala", referred to by Mr. Dickie, is the explanation of why Gibbs thought the "Argyll" on his port bow rather than on his starboard bow, but whether she was one and a half points on the port bow or one and a half points on the starboard bow, she was so nearly dead ahead that had McAlpine on the "Argyll" continued on his course, or directed his course to starboard, after receiving and answering the one blast from the "Gualala's" whistle, instead of ordering the man at the wheel of the "Argyll" not to "let him come any closer" there would have been no collision.

Appellant bases its contention that the "Gualala" was responsible for the collision very largely upon the diagram drawn by Captain Curtis while under cross-examination by appellant's counsel. A careful examination of the diagram shows that

Gibbs was mistaken about the distance the "Argyll" was away from him and mistaken, perhaps, about the fact that the "Argyll" was one and one-half points on the "Gualala's" port bow. But whether he was mistaken about the distance the two vessels were apart or not, there is no question but that the two vessels were in sight of each other at least five minutes before the collision. Gibbs' story (Ap. 262) is that he saw the red light of the "Argyll" about three minutes before the collision and then blew one blast of his whistle and about a minute and a half after seeing the red light and the two vessels had exchanged signals he saw the "Argyll's" green light and then he immediately stopped his engines and backed full-speed astern. It is from this simple statement of Gibbs' that counsel for claimant builds up the elaborate explanation of the diagram drawn under his direction to prove that Gibbs was mistaken—an explanation and a diagram that ignore entirely the first change to port upon the part of the "Argyll", as well as the possibility of the truth of the testimony of those witnesses who swore that they heard the Captain of the "Argyll" immediately after the collision admit that he had gone up to the bridge, having heard one whistle blown on the "Argyll", and on seeing a light ahead ordered the man at the wheel to put her over "hard a starboard".

The appellant, knowing how impossible it is to justify the conduct of those in charge of its own vessel, has "banked its all" upon the attempt to

discredit Gibbs by means of the diagram drawn by Captain Curtis. The attempt was not successful in the District Court, and we do not believe it will be here. We ask the court to read over the testimony of Gibbs. Every effort was made on cross-examination to shake his story and to force him into contradictions, but we submit that the record shows no deviation upon his part from the facts as he gave them before the Inspectors, as well as on direct examination. His testimony is entitled to full credit and bears all the hallmarks of truth. As Dickie said (Ap. 172):

“The angle which Mr. Gibbs gave, and the time which Mr. Gibbs gave, and the speed which he gave, harmonized very closely, so closely that I assumed they were all correct in the laying down of Mr. Gibbs’ courses of the ‘Gualala.’ ”

We are content to rest our case upon the story told by Gibbs. The contrast between it and that of the thoroughly discredited McAlpine is so great that we desire to refer to the language in *The Eagle Wing*, 135 Fed. 826:

“Where the testimony in behalf of vessels in collision is conflicting and uncertain as to what was done upon one vessel, and the testimony on behalf of the other vessel as to what was done is clear and positive, or where the testimony of one of the vessels comes from intelligent, experienced, and apparently reliable witnesses, and that of the other from ignorant, inexperienced, shiftless, and manifestly unreliable persons, the court in admiralty, as in all other classes of litigation, must take into account the existence of such conditions in fixing the responsibility for the collision.”

The portion of appellant's brief under the heading "The Vessels Were Approaching Starboard to Starboard, and the Collision Was Caused by the 'Gualala' Porting", pages 28 to 31, is based mainly upon the testimony of McAlpine, Hansen and Torbjorsen, testimony which, where not totally unworthy of belief, fixes upon claimant the fault for the collision. On page 29 claimant, much to our surprise, refers to the testimony of Hansen, their lookout, that he "estimated the distance of the 'Gualala' away at the time he first saw her lights at about three or four ship lengths and at about three ship lengths when she blew one whistle" (Ap. 126-7). The pilot house log of the "Argyll" records: "2:59 lookout man reported green light on starboard bow 2 points. Altered course $\frac{1}{2}$ point to port. *Received one whistle from vessel.* 3:05 reversed engines full astern. 3:07 collided with the 'Gualala'."

The vessels were each traveling at the rate of 8 knots an hour or at a combined rate of 1624 feet per minute, and yet we are asked to believe Hansen that when he first saw the lights of the "Gualala" she was three or four ship lengths away, and claimant bases a serious argument upon such a premise. This argument that the maneuvers of the "Argyll" were made necessary by the action of the "Gualala", and being "in extremis", are not of such a character as to show fault upon the part of those in charge of the "Argyll", totally ignores the entries in the logs of the "Argyll". What were those

in charge of the "Argyll" doing between 2:59, when they saw the "Gualala's" approaching lights and heard her one whistle and answered it, and 3:05 when they reversed the "Argyll's" engines? Between 2:59 and 3:05 the "Argyll" was proceeding full speed ahead and during that time running at the rate of 812 feet per minute. She had covered 4872 feet or approximately one mile of the distance between her and the approaching "Gualala". If when she exchanged whistles with the "Gualala" she had taken the action those whistles indicated and altered her course to starboard she would have passed the "Gualala" in safety and at such a distance that we would not now be before the court attempting to fix the blame for the disaster that occurred.

The case of *The Ping-On*, 11 Fed. 607, cited by appellant, arose out of a collision in the Yang-tse-Kiang River in China, and the court was called on to pass upon the responsibility for the collision in the channel. A point was made in the case that by custom in going up or down the river vessels kept respectively to the starboard side. The tug first sighted the "Ping-On" about 2 to 2½ points off her starboard bow. After proceeding some distance the vessels exchanged cross-signals and a collision occurred.

The court, in *The Roanoke*, 45 Fed. 905, held that a sailing vessel which changed her course when so near a steamer as to make it impossible for the steamer to avoid her was responsible for the col-

lision, but we fail to see how the case is in point here.

In *The Eagle Wing*, 135 Fed. 826, the vessel held responsible for the collision was in charge of an unlicensed officer and the fact was practically undenied that just prior to the collision the "Eagle Wing" suddenly changed her course without warning and ran into the other vessel.

The facts found by the court in *The Atlantic City* are sufficient to distinguish it from the case at bar: The "Sylvan Glen", going up the Delaware River, sighted the ferry boat "Atlantic City" coming out of her slip. The ferry boat came out and straightened away on her course about in the middle of the river showing her green light to the "Sylvan Glen". They each blew two blast whistles, although neither heard the other, and when about 300 feet apart the "Glen" suddenly ported her helm and ran across the bows of the "Atlantic City". Although the "Glen" claimed the other vessel had changed her course there was no evidence of it, other than that the "Glen" claimed to have heard a blast of one whistle. It was proven that this one blast came from another vessel. No change of course was indicated on the part of the "Atlantic City". The "Glen" was, of course, held responsible for the collision.

In *The Free State*, 91 U. S. 200; 23 L. Ed. 299, the court held that

"if two ships, one of which is a sailing ship and the other a steamship, are proceeding in

such direction as to involve risk of collision, the steamship shall keep out of the way of the sailing ship, which must hold its course and rely upon the steamship to avoid a collision."

The sailing ship altered its course, and for that plain violation of the rule was penalized.

The Manitoba, 122 U. S. 154; 30 L. Ed. 1095, seems to us to be an authority in point for the "Gualala" rather than the "Argyll". The court said (bottom of page 1099):

"The *Manitoba* was in fault in not indicating her course, by her whistle, and in not slowing up, and in failing to reverse her engine until it was too late to accomplish anything thereby."

Are not each of these faults those committed by the "Argyll"? She changed her course to port and kept on changing it for at least four minutes before the collision without indicating it to the "Gualala" by whistle; she did not slow up; she failed to reverse her engines until too late.

Counsel for appellant in commenting upon this case write:

"Here, the 'Argyll', by porting, and immediately reversing, and indicating it by her whistles, took the very measures, for the want of which the 'Manitoba' was condemned."

We submit that this is *not* what the "Argyll" did. She *did* change her course to port. She *did not* blow two whistles, which indicate such a change. She *did not* "immediately reverse".

The pilot house log of the "Argyll" reads:

"2.59 Lookout man reported green light on starboard Bow 2 points. Altered course $\frac{1}{2}$ point to Port. Received one whistle from vessel.

3.07 Collided with 'Gualala'."

The engine room log reads:

"Astern full speed 3.06."

The "Argyll", from her own record made at the time, reversed her engines not more than *one* minute before the impact between the two vessels and had for seven minutes before the engines were reversed been running at full speed ahead.

The next case cited by appellant is that of *The Voorwaarts*, L. R. 5 A. C. 876; 4 Asp. M. C. 360; but in commenting upon it appellant again commits the error of stating that "the 'Argyll' did reverse at once". We have just cited their own testimony to prove she did not.

The Voorwaarts is cited in *Marsden on Collisions* in support of this text:

"If a vessel by her own fault makes a collision so imminent that it cannot be avoided except by extraordinary skill, nerve, or exertion on the part of the other ship, and a collision occurs, it will be held to have been caused by the former, and she will be held for the entire loss."

This text is another way of stating the "primary fault" rule laid down in *Belden v. Chase*, 150 U. S. 674; 37 L. Ed. 1218, to which we shall refer later.

Appellant, although stating that the "Khedive" was held in fault, neglected to state that the reason the House of Lords found the captain of the "Khedive" at fault was because he elected to keep his engines going full speed ahead and because he did not stop and reverse.

In attempting to excuse Hansen for his dereliction of duty and his failure to see the lights of the "Gualala" until the vessels, as he put it, were three or four ship lengths away, appellant has referred to certain testimony as to atmospheric conditions. An examination of that testimony will show how little foundation there is for any claim that Hansen did not see the lights of the "Gualala" because of fog. The District Court specifically found (Ap. 367) that the collision occurred upon "a clear night, when the lights of each were easily discernible to the other while they were yet miles apart." There was no reason other than Hansen's neglect, why the lights of the "Gualala" were not more closely observed from the "Argyll". But what becomes of the admissions that the lights of the "Gualala" were seen on the "Argyll" at 2:59 and that the collision did not occur until 3:07 with the "Argyll" running full speed ahead from 2:59 to 3:06? The "fog" theory is a very thin veil to cast over the conduct of Hansen and McAlpine.

The attempt to excuse the failure of Hansen to report to the bridge when he saw both the side lights of the "Gualala" is equally futile. When counsel for claimant stated that Hansen was under

no obligation to report the change in the lights on the "Gualala" to McAlpine, on the bridge, because Hansen *knew* McAlpine must have known it from the whistle, counsel forgot that the lights on the "Gualala" had changed *before* the whistle. McAlpine testified that when he heard the one whistle from the "Gualala" he looked up and for the first time saw the red light (Ap. 65).

"Q. Then it is a fact that the whistle on the 'Gualala' called your attention to it, and you looked and saw the red light. Is it not true that the whistle called your attention to it?

A. Certainly, he brought my attention to it.

Q. * * * You did not see it come into view, you heard the whistle, and then you looked up and you saw the red light?

A. Yes, sir.

Q. You do not know when that red light was first observed from the 'Argyll'?

A. No, sir.

The COURT. Q. That is so?

A. Yes, sir."

Appellant states that "*if* Hansen had reported both lights, and then the red light alone, it would not have avoided the collision". We assert most confidently that it would have avoided the collision. It must be remembered that there is no record of *how long* the interval was between the time when from the "Argyll" the green light of the "Gualala" was visible *with* the red light, and the going out of the green light, and the whistle suddenly calling to McAlpine's attention the dangerous course he was upon and the chances he had taken. Even then believing, apparently, that there was no danger, he

answered the whistle and continued on full speed ahead.

Appellant assumes, quite properly, that we will attack the credibility of McAlpine. Justification, or attempted justification, of McAlpine is futile. With all of the ingenuity at the command of counsel for claimant, no explanation can be made which will suffice to pardon or excuse McAlpine for doing what he did do in causing the collision, and omitting to do what he might have done to obviate it.

The "in extremis" argument made by counsel for appellant (appellant's brief, p. 43) is conclusively disproved by the entries in the pilot house log book above quoted. According to these entries at 2:59 the "*Gualala*" was reported and blew one whistle. This one whistle was answered by the "*Argyll*", but she did not alter her course to starboard as she should have done, but continued on until, according to the log book, her engines were reversed at 3:05; the collision occurring at 3:07. If these figures are correct, and certainly appellant is not in a position to dispute them, it clearly appears that the answering blast of appellant was *not* given "in extremis", but at the time the "*Gualala*" was sighted, eight minutes before the collision. These facts and figures completely dispose of appellant's whole contention on this point. Moreover, we have the admission of McAlpine himself (Ap. 56) that *the whistle of the "Gualala" was blown about a minute and a half after she was sighted*. Assuming this to be correct, although it is contradicted by the

entry in the log book, still $6\frac{1}{2}$ minutes elapsed before the collision occurred, and $4\frac{1}{2}$ minutes elapsed before the engines of the "Argyll" were reversed.

The attempt of appellant to establish inefficiency and negligence on the part of the bridge officer and lookout on the "Gualala", by the statement that "If it be assumed, for the sake of argument, that the story of Gibbs, first officer of the 'Gualala', was correct", and by then reciting Gibbs' version of what was done upon the "Gualala", following it with the contention that Gibbs' statement proves to a demonstration that Gibbs was not maintaining the efficient watch required of a bridge officer, makes no allowance whatever for the fact that the "Gualala" did not have steam steering gear, but was the type of vessel that had a hand-wheel, which changed her course slowly (Ap. 39).

In making the argument referred to, appellant also fails to take into account the change of course to port upon the "Argyll" after the order of McAlpine to the man at the wheel, "Don't let him come any closer". The result of the two factors just mentioned was to keep the lights of the respective vessels upon practically the same angle and the same line of approach. The "Gualala" paid off slowly to her right, the starboard, and the man at the wheel on the "Argyll", obeying his instructions "not to let the 'Gualala' come any closer", paid off to her left, the port, until finally, seeing disaster impending, McAlpine, on the bridge of the

"Argyll", when too late, suddenly awakened to the danger and ordered his wheel hard a'port. Gibbs testified that he saw the range lights of the "Argyll" first and kept watching them to see if the "Argyll" was changing her course (Ap. 262), and, as he puts it (Ap. 263), "It did not look to me as though she had changed her course, but it appeared that she was not porting her helm at that time; it looked to me as if she had not ported her helm; it looked to me as though she was coming to the starboard". (Gibbs meant, of course, that the "Argyll" was coming to the starboard of the "Gualala", or in a direction to port upon the "Argyll", which is undoubtedly exactly what the "Argyll" did do, with the man at her wheel carrying out his instructions, "not to let the 'Gualala' come any closer".) As Comstedt, the lookout, put it (Ap. 356):

"Well, after I reported her light, we was blowing one whistle, and the 'Argyll' she was answering us right off, and I could see her red light when we swung, being swinging to starboard, and she was still coming closer to us, and somehow she couldn't swing clear, she was keeping on swinging with us, and I didn't know what way she was going; she was coming right after us, came right on for us, like."

The theory of counsel for the appellant from the first has been that the "Gualala", immediately prior to the collision, and at a time when by so doing she made the collision inevitable, suddenly changed her course and attempted to cross the bow of the "Argyll". The testimony of those on board the "Gualala" stands uncontradicted and it is unim-

peached. They had seen the lights of the "Argyll" for at least four minutes prior to the collision and had been vigilantly watching those lights and doing everything which to them seemed possible to enable them to properly direct their course in such a manner as to avoid a collision, and yet appellant would have the court believe that, at a moment when by such action, and only such action, they could have brought about a collision, they suddenly changed the course of the "Gualala" and ran squarely into the path of the approaching "Argyll", and into such a position that not only the safety of their vessel was imperiled, but their lives as well. Even an inexperienced navigator would, we submit, not have taken such a course. The rules of common sense, to say nothing of the rules of navigation, would have been violated to such an extent by so doing that we think the attempt upon the part of the "Argyll" to so explain the collision was seized upon as a desperate chance to throw upon the "Gualala" the responsibility for the loss which, we think, we can demonstrate, was due solely to the flagrant faults of those navigating the "Argyll".

As has been said by the Supreme Court of the United States, in *Haney v. Baltimore Steam Packet Co.*, 23 How. 287; 16 L. Ed. 563; in language which was quoted with approval and followed in *The Lurette Speddin*, 184 Fed. 283, at p. 285:

"We think the statement of Mr. Justice Grier, speaking for the Supreme Court of the United States, aptly characterizes this defense:

‘This is the stereotyped excuse usually resorted to for the purpose of justifying a careless collision. It is always improbable and generally false.’

and proceeding further, said:

‘The hypothesis set forth in the answer to excuse this collision, that the boats were passing on parallel lines, 300 yards apart, and that, when within 100 to 150 yards of passing each other, the schooner turned round and ran herself under the bows of the steamer, is not only grossly improbable in itself, but contradicted by the testimony, and is a mathematical impossibility.’ ”

Our own Circuit Court of Appeals, speaking through Judge Hawley, in *The Dauntless*, 129 Fed. 721, quoted the above language from the Haney case with approval and, upon the same ground, refused to accept a theory that one vessel had turned suddenly across the bow of another as an excuse for the collision.

The last case in which this threadbare excuse has been criticised is that of *The Curtin*, 205 Fed. 989, at page 991.

IF THE “ARGYLL” WAS GUILTY OF A FAULT SUFFICIENT TO ACCOUNT FOR THE COLLISION, SHE MUST PROVE THAT THAT FAULT DID NOT CONTRIBUTE TO THE DISASTER.

The leading case on this point is that of *Belden v. Chase*, 150 U. S. 674; 37 L. Ed. 1218, where the court said:

“Where fault on the part of one vessel is established by uncontradicted testimony and

such fault in itself is sufficient to account for the disaster, it is not enough for such vessel to raise a doubt with regard to the management of the other vessel."

In slightly different language, the court in *The Oregon*, 158 U. S. 186; 39 L. Ed. 943, at page 949, said:

"As we had occasion to remark in *Alexandre v. Machan*, 147 U. S. 85; 37 L. Ed. 90, where one vessel clearly shown to have been guilty of a fault, adequate in itself to account for the collision, seeks to impugn the management of the other vessel, there is a presumption in favor of the latter, which can only be rebutted by clear proof of a contributing fault."

Again, in the case of *The Chicago*, 125 Fed. 712, at page 715, the Circuit Court of Appeals of the Second Circuit, in a collision case, said:

"This court has repeatedly held, following the Supreme Court, that a vessel which is primarily in fault for a collision cannot shift its consequences in part upon the other vessel without clear proof of the contributing negligence or fault of the latter. Her own negligence sufficiently accounts for the disaster. The reckless navigation of the burdened vessel in this case calls for the application of our comments in *The Transfer No. 8*, 96 Fed. 253, 'The fault of the *Waterman* is so glaring, and its consequences precipitated a situation involving such difficulties, that we are not inclined to be severely critical of the maneuvers by which the *Transfer* undertook to escape from it'."

In *The Britannia*, 153 U. S. 130; 38 L. Ed. 660, at page 665, the court quoted the following from *Belden v. Chase*, *supra*:

“It is a settled rule in this court that when a vessel has committed a positive breach of statute she must show not only that probably her fault did not contribute to the disaster, but that it could not have done so.”

In *The Victory*, 168 U. S. 412; 42 L. Ed. 519, the court said:

“As between these vessels, the fault of The Victory being obvious and inexcusable, the evidence to establish fault on the part of The Plymothian must be clear and convincing in order to make a case for apportionment. * * *

The recognized doctrine is thus stated by Mr. Justice Brown in *The Umbria*, 166 U. S. 404: ‘Indeed, so gross was the fault in this connection that we should unhesitatingly apply the rule laid down in *The City of New York*, 147 U. S. 72, and the *Ludwig Holberg*, 157 U. S. 60, that any doubts regarding the management of the other vessel, or the contribution of her faults, if any, to the collision, should be resolved in her favor.’”

In *The Wm. Chisholm*, 153 Fed. 704, where a collision occurred at night in Lake St. Claire, there was evidence tending to show that signals for passing port to port, in accordance with the rules, were exchanged, although that was in dispute; but it was shown without dispute that when the vessels were some 1500 feet apart and head on, one gave a signal of two blasts, which was assented to, and then the other put her helm hard a-starboard and swung to

port. After so swinging it was shown that the first vessel did not starboard her wheel, and, in holding her liable, for not complying with the passing signal, the court, at page 712, said:

“We find upon the concurrence of the testimony of both sides that the two vessels were approaching each other head and head, or nearly so, for a length of time before they would meet amply sufficient to make provision for passing. If they continued on such courses, there would be risk of collision. If the *Oceanica*, before the vessels were laid on these courses, but in anticipation thereof, had given a signal of one blast, as it was her duty to do, and that had been assented to, she had no right to change it, being under no necessity, and the other vessel was bound to assume that they were to pass port to port until the *Oceanica* gave clear signs that she was not complying with the agreement; if she changed her purpose while they were proceeding end on and blew two blasts, she was bound to proceed accordingly and go out to port. But if, as she claims, she had given a double blast before the vessels came head and head, and had given no other, she was equally bound to go to port for passing, and in either case there was nothing in the conditions which made this dangerous or difficult. Her double blast would mean to the *Chisholm*, ‘I am directing my course to port’. If she was in doubt of the intention of the other vessel, she was bound to give an alarm whistle and check or stop and reverse, if necessary, as required by Rule 26; but, if she gave no notice of any embarrassment, the *Chisholm* was entitled to assume that she had none, and proceed accordingly. Thus, upon any fairly possible construction of the facts, the *Oceanica* was grossly at fault. * * * It seems clear that

but for her misconduct the collision would not have happened.

In these circumstances, the *Chisholm* is entitled to be judged by the rule long followed by the courts of England and of this country that when one vessel, clearly shown to have been guilty of a fault adequate in itself to account for the collision, seeks to impugn the management of the other vessel, there is a presumption in favor of the latter, which can be rebutted only by clear proof of a contributing fault." (Citing a number of cases.)

We have quoted so fully from this case because the points made by the decision are so similar to those we are making in the case at bar. Digressing, for the moment, to one of these other points, after the "*Gualala*" blew the passing signal of one blast, indicating: "I am directing my course to starboard", and received the assent of the "*Argyll*" to this course, the "*Gualala*" had only to direct her course to starboard. As it is put in the *Chisholm* case: "If she (here the '*Argyll*') gave no notice of any embarrassment, the '*Chisholm*' (here the '*Gualala*') was entitled to assume that she had none, and proceed accordingly."

Returning to the presumption in favor of the "*Gualala*": In *The Georgetown*, 135 Fed. at page 857 (in this case the "*Georgetown*" had the other vessel upon her starboard bow), the court said:

"The *Georgetown* on the occasion in question was the vessel on whom the burden rested to avoid the collision; and she having been found guilty of faults sufficient in themselves to account for the collision, the burden is upon her

to show that her negligence not only did not probably produce, but could not have contributed to, the collision, and, under these circumstances, cannot escape liability by the suggestion of possible negligence upon the part of the tug and tow. All reasonable doubts as to the vessel at fault must be resolved in favor of the tug and tow, and they held not contributing to the collision unless their negligence is clearly established."

The same rule was followed in *Foster v. Merchants & Miners etc.*, 134 Fed. 964.

In *The Martello*, 153 U. S. 64; 38 L. Ed. 639, at page 641, the court, after stating that the "Willey" was guilty of a statutory fault in having failed to provide herself with a fog horn, as prescribed by the international regulations, and so not having it was unable to give the signal required through such fog horn, said:

"The presumption is that this fault contributed to the collision. This is a presumption which attends every fault connected with the management of the vessel, and every omission to comply with a statutory requirement, or with any regulation deemed essential to good seamanship. In the *Pennsylvania v. Troop*, 86 U. S. 152; 22 L. Ed. 148, it was said that in such a case the burden rests upon the ship of showing not merely that her fault might not have been one of the causes, or that it probably was not, but that it could not have been."

This rule has been followed so often that it has been spoken of in case after case in the United States Supreme Court.

Commenting upon it in *The Genessee Chief*, 12 How. 443; 13 L. Ed. 1058, at page 1067, the court said:

“It is the duty of every steamboat traversing waters where sailing vessels are often met with, to have a trustworthy and constant lookout besides the helmsman. * * * And whenever a collision happens with a sailing vessel, and it appears that there was no other lookout on board the steamer but the helmsman, or that such lookout was not stationed in a proper place, *or not actually and vigilantly employed in his duty*, it must be regarded as prima facie evidence that it was occasioned by her fault.”

In *The Rondane*, 9 Asp. M. C. 109, where a violation of Rule XVI was in question, and where it was claimed that the violation of the rule did not contribute to the collision, the president of the admiralty division said:

“When a vessel has broken a statutory rule, the onus on those who seek to say it is immaterial is a very considerable one. In this case, one is necessarily cast on a matter of imagination. One has to consider whether it can possibly be the case that the failure of the ‘Herman Koeppen’ to obey this rule is immaterial. I am not able to come to that conclusion. It is a matter for imagination and no one could possibly say what would have happened if the ‘Herman Koeppen’ had obeyed that rule. Every one can conjecture what would have happened.”

It was put still more strongly in *The Brittania*, 9 Asp. M. C. 67:

“One must see that the non-stopping could by no possibility have contributed to the collision.”

The late Judge De Haven, in this district, in *The Dauntless*, 121 Fed. 420, at page 421 (the decision in the District Court was later affirmed in the Circuit Court of Appeals, from which last mentioned decision we have already quoted), quoted in his decision in that case the principle stated by the Supreme Court in *The Pennsylvania*, 19 Wall. 125; 22 L. Ed. 148, that where a vessel is guilty of the violation of a statutory rule intended to prevent collision,

“The burden rests upon the ship of showing not merely that her fault might not have been one of the causes, or that it probably was not, but that it could not have been. Such a rule is necessary to enforce obedience to the mandate of the statute.”

Judge Hanford, in *The Admiral Cecile*, 134 Fed. 673, at page 678, in commenting upon the rule, said:

“This was repeated and declared to be the settled rule in collision cases by the Supreme Court in *Richelieu Nav. Co. v. Boston Ins. Co.*, 136 U. S. 422; 33 L. Ed. 398. The same rule was again reiterated in the case of *Belden v. Chase*, 150 U. S. 699; 37 L. Ed. 1218.”

The following cases are all to the same point:

The Pennsylvania, 86 U. S. 19; 22 L. Ed. 148;

Richelieu & O. Nav. Co. v. Boston M. I. Co., 136 U. S. 408; 34 L. Ed. 398;

The Martello, 153 U. S. 74; 38 L. Ed. 641;

Greenwood v. Westport, 60 Fed. 567;

Thomas Towboat Co. v. Central R. Co., 61 Fed. 118;

Flint & P. M. R. Co. v. Marine Ins. Co., 71 Fed. 215;

The Glendale, 81 Fed. 640;

The Livingstone, 87 Fed. 778;

Sounell v. Boston Towboat Co., 89 Fed. 762;

Mexican C. R. Co. v. Jones, 107 Fed. 65;

The Lakine, 118 Fed. 979;

The Admiral Cecile, 134 Fed. 678;

Foster, Master v. Merchants & M. T. Co.,
134 Fed. 964;

The Edward Smith, 135 Fed. 35.

It is not possible for the "Argyll" to sustain the burden imposed upon her to show that her faults *might not have been* one of the causes, or that one of them *probably was not* one of the causes, to say nothing of demonstrating that they *could not have been* one of the causes of the collision.

In *Spencer on Collisions*, Sec. 106, the rule is stated:

"Where a statutory requirement or a precaution demanded by good seamanship has been omitted immediately preceding the collision, and the omission is one well calculated to bring about the same, the law will presume that the collision occurred as a result of such neglect, to remove which presumption the burden of proof is upon the one omitting such precaution or requirement to clearly show that the thing omitted did not contribute to or produce the collision."

In *Marsden on Collisions*, page 471, the author states:

"If a ship is proved to have been negligent in not keeping a proper lookout she will be

held answerable for all the reasonable consequences of her negligence." * * *

If a vessel violates the rule requiring her to keep a proper lookout, or any one of the specific injunctions of the international rules (unless excused by the emergency rule 27, as to which there is no contention here), and a collision occurs she will be held liable unless she can show that the collision would have occurred even if she had obeyed the rule. The burden is on the "Argyll" to show that not only the failure of the lookout, Hansen, to report (1) the lights of the "Gualala" when they could have first been seen from the "Argyll"; (2) the change in lights upon the approaching "Gualala"; (3) the disappearance of the green light on the "Gualala", and (4) the evident neglect of McAlpine in not watching the "Gualala's" bearing and the "Gualala's" lights, *did not cause* the collision, but that it *could not have contributed to it*.

It will be noted that, according to the principles laid down in the cases already cited, it is not only necessary for the "Argyll" to show that her violation of the rules was not the cause of the collision, but that she must also show that these violations *could by no possibility* have contributed to the collision. We are, for the purpose of this particular phase of the case, taking as true the testimony of McAlpine, and the lookout, Hansen.

From the testimony of the witnesses produced on behalf of the "Argyll", she was guilty of three faults; each one of which was sufficient in and of

itself to account for the disaster. Under the foregoing decisions any one of those faults upon the part of the "Argyll" entitled the libelants to a decree against her for the full amount of the damage caused by the collision, and the court below properly so found.

These several faults were:

- I. *Failure to maintain a sufficient lookout.*
 - II. *Failure to keep out of the way of the "Gualala", she being on the "Argyll's" starboard bow.*
 - III. *Failure to avoid the "Gualala" after answering her one blast of the whistle.*
-

I. FAILURE TO MAINTAIN AN EFFICIENT LOOKOUT.

The fault of those on board the "Argyll" in failing to maintain a proper and efficient lookout was so great, and in effect was so disastrous, that an analysis, or subdivision, of this fault evidences that the collision would not have occurred if McAlpine, on the bridge, had seen, or if Hansen, on the fore-castle, had reported to him

- (a) When the lights of the "Gualala" could first have been seen from the "Argyll";
- (b) When the two side lights of the "Gualala" could first have been seen upon the "Argyll";
- (c) When the green light of the "Gualala" disappeared from view and the red light remained in sight.

These faults, without any others upon the part of the "Argyll", are sufficient, in our opinion, to put upon her the responsibility for the entire loss sustained through the collision.

Hansen, the lookout (whose duty it was, of course, to report not only when the lights of the "Gualala" could first be seen upon the "Argyll", but also any change in the bearings of those lights, or any change in the lights themselves), through all of the time, from the moment when he did first see the lights of the "Gualala" from the "Argyll" (and at a time when they must have already been observable for several minutes) made, according to McAlpine, only one report to the bridge (Tr. 59).

"Q. Mr. McAlpine, did the lookout report to you at all as to the lights on the "Gualala" after they had been reported to you on the starboard bow?

A. He reported the green light on the starboard bow.

Q. That was the only report you got from your lookout?

A. Yes, sir."

The lookout, however, testified (Tr. 86) that he made two reports to the officer on the bridge; one, when the masthead light was first seen, and another, when he first saw the green light; but, after testifying that he saw both the red light and the green light together, said (Tr. 86):

"Q. You made no report about that (seeing both lights together) to the officer on the bridge?

A. No, sir; I did not make no report. I made no report to the officer on the bridge about that.

Q. You did not say anything about that?

A. No, sir.

Q. From then on you did not say anything more about the lights of the 'Gualala'?

A. That is all."

And yet he testified, under oath, before the United States inspectors, at a time when, according to the witness' own testimony, his recollection was clear upon the subject (Tr. 97), that he *did not* see both of those lights together. Whether we take his testimony before the inspectors as the truth, agreeing with that of McAlpine, that both lights of the "Gualala" were not seen from the "Argyll" at any time prior to the collision, or whether we believe his testimony, in this case, that he saw both of those lights together, and then failed to report them to the officer on the bridge, the lookout was equally at fault. He proves, in one breath, his own inefficiency; the lack of care on the part of those in charge of the "Argyll", and the absolute responsibility of those in charge of her for the collision, and the loss thereby suffered.

In a comparatively recent case in the United States Supreme Court, *The Oregon*, 158 U. S. 186; 39 L. Ed. page 948, Mr. Justice Brown said, in commenting upon the necessity for an efficient lookout:

"It is hardly possible that, in a four-hour watch, the attention of the lookout should not be occasionally diverted from his immediate

duty. Yet the withdrawal of his eye from the course of the vessel, even for the fraction of a minute, may occur at a moment when a light comes in sight, and before this light can be accurately located and provided for, a collision may take place. As was said by Mr. Justice Swayne, in *Pentz v. The Ariadne*, 80 U. S. 13; 20 L. Ed. 542, 'the duty of the lookout is of the highest importance. Upon nothing else does the safety of those concerned so much depend. A moment's negligence on his part may involve the loss of the vessel with all the property and the lives of all on board. The same consequences may result to the vessel with which his shall collide. In the performance of his duty the law requires indefatigable care and sleepless vigilance.'

In *The Ariadne*, 80 U. S. 13; 20 L. Ed. 542, speaking of the duty of the lookout and the burden upon the vessel shown to have had a poor lookout, the court said:

"Every doubt as to the performance of the duty, and the effect of non-performance, should be resolved against the vessel sought to be inculpated until she vindicates herself by testimony conclusive to the contrary.

The district judge was also of opinion that the *Clan Mackenzie* failed to discharge her whole obligation to the steamer, and should consequently share the loss. In this opinion the circuit judge, with evident hesitation, concurred. As we had occasion to remark in *Alexandre v. Machan*, 147 U. S. 85; 37 L. Ed. 90, where one vessel clearly shown to have been guilty of a fault, adequate in itself to account for the collision, seeks to impugn the management of the other vessel, *there is a presumption in favor of the latter, which can only be rebutted by clear proof of a contributing fault.*"

In the propeller *Colorado*, 91 U. S. 692; 23 L. Ed. at page 382, Mr. Justice Clifffors said:

“Lookouts are valueless unless they are properly stationed and vigilantly employed in the performance of their duty; and if not, and in consequence of their neglect, the approaching vessel is not seen in season to prevent a collision, the fault is properly chargeable to the vessel, and will render her liable, unless the other vessel was guilty of violating the rules of navigation. Citing *Baker v. The City of New York*, 1 Cliff. 84; *Whitridge v. Dill*, 23 How. 453; *The Catherine v. Dickinson*, 17 How. 177.”

McAlpine testified (Ap. 85) that a steamer's masthead light on a clear night—and this was a clear night—can be seen five miles, and that the lights of the “*Gualala*” upon this occasion were not seen until the two vessels were within three miles of each other.

Hansen, the lookout, however, testified (Ap. 127) that when he first saw the lights of the “*Gualala*” from the “*Argyll*”, she was only about three or four ship's lengths away, and yet that the masthead lights of a vessel could be seen about *ten* miles away. Immediately after he had testified that he first saw the lights of the “*Gualala*” when she was only three or four ship's lengths away, he testified that he *should* have seen the lights about ten miles away. He then reiterated that he saw them first when the vessels were only three or four ship's lengths, or about 1200 feet, apart. It seems to us that this testimony not only proves beyond cavil the inefficiency of this man as a lookout, but also

his absolute untrustworthiness. It is a striking example of what we shall discuss in a later portion of our brief, the unreliability of the testimony introduced on behalf of the "Argyll".

Spencer on Marine Collisions, Sec. 175, referring to the necessity for a vigilant lookout, lays down the rule as follows:

"Vigilance as well as experience is required of a lookout, and if he is inattentive to his duty it is not a sufficient excuse to say that he was competent to perform the duties required of him when it is shown that the approach of a vessel might have been observed in time to have avoided collision had the lookout been watching. The fact that it was not seen is evidence of such a lack of care as will render the vessel liable. The fact being shown that an approaching vessel was not observed, under circumstances when it could have been seen, the law will presume negligence."

The quotation from Spencer is taken, almost word for word, from Mr. Justice Clifford's opinion in *The Sunnyside*, 1 Otto, 208; 23 L. Ed. 302, at page 306:

"Vigilance as well as experience is required of a lookout; and, if he is inattentive to his duty, it is no sufficient excuse to say that he was competent to perform the required service. No doubt the bark had a lookout; and the evidence tends to prove that he was competent; but his own testimony shows conclusively that he did not properly perform his duty after the mate came forward and returned. He admits that he could not tell whether, at that time, the steam tug was stationary or in motion; and he must have known that the mate left the fore-

castle and went aft as ignorant upon the subject as he himself was.

Suppose that was so, and there is no apparent reason to doubt it, then it was his plain duty, the moment he ascertained that the lights ahead were stationary, to have reported that fact to the mate as the officer of the deck."

Marsden on Collisions, page 471, states the rule:

"If a ship is proved to have been negligent in not keeping a proper lookout she will be held answerable for all the reasonable consequences of her negligence. * * * The lookout must be vigilant and sufficient according to the exigencies of the case."

The court in *The Michigan*, 63 Fed. 280, at page 288, held a vessel responsible for a collision on account of a defective lookout and, in doing so, said:

"The Michigan was in fault in not *having* had a competent lookout in her bow, close to her stem, diligent in duty, alert to see what was before him, and prompt in reporting in time, the position of the Holland."

In a late case, *The Earl P. Mason*, 195 Fed. at page 863, in holding a steamer liable for a collision, the court said:

"The fault lay with the steamship. It is clear, I think, either that her inexperienced lookout—a seaman who had just been shipped after little inquiry into his very slender qualifications, and was performing the duty of a lookout for the first time in his life—failed in vigilance, or (what is perhaps more likely)

that she miscalculated the distance between the vessels and got into a fatal position before she realized the situation."

In *The Viola*, 59 Fed. 632, where there was a conflict as to the bearing of two vessels, the "Viola" claimed that the "Monette" was seen upon her port bow. The witnesses for the latter testified that for a considerable period before the collision the green light only of the "Viola" was visible, showing that she was on the "Viola's" starboard bow. It was proved that the "Viola" had not maintained a good lookout, and the court held the "Viola" responsible for the collision and in so doing (page 634) said:

"The failure of the 'Viola' to notice the 'Monette' until she was so near may well have led to imperfect observation and mistake as to the precise bearing of the 'Monette'. I am constrained to find the latter was in fact on the 'Viola's' starboard bow, and that this mistake led to the collision through the order given to port, instead of to starboard, the 'Viola's' helm. This mistake was so near collision as not to be itself ascribed as a fault; for it was doubtless the effect of the excitement in extremity. But as this arose in consequence of the 'Viola's' fault in not maintaining a good lookout, and not seeing the 'Monette' in time for correct observation of her course, and proper maneuvers, the latter fault precludes the 'Viola' from the defense of error in extremis. *The Elizabeth Jones*, 112 U. S. 514, 5 Sup. Ct. 468."

Mr. Justice Brown, in *The New York*, 175 U. S. 187; 44 L. Ed. 126, at page 134, said:

“No reason is given why the signals of the ‘Conemaugh’ were not heard, and as the ‘New York’ was not more than a mile distant from her when her first whistle was blown, her inability to hear them is inexplicable, except upon the theory that no sufficient lookout was maintained, or that such lookout did not attend properly to his duties. *Her officers failed conspicuously to see what they ought to have seen, or to hear what they ought to have heard, this, unexplained, is conclusive evidence of a defective lookout.* The *Sea Gull*, 23 Wall. 165; 23 L. Ed. 90; The *James Adger*, Fed. Cases No. 7188; The *Fanita*, Fed. Cases No. 4636; The *Sunnyside*, 91 U. S. 208; 23 L. Ed. 302; Spencer, *Collisions*, Sec. 175.”

Again, McAlpine testified (Ap. 60):

“Q. You only know that when the whistle was blown by her you looked up and saw then for the first time the red light?

A. Yes, sir.

(Ap. 61) Q. How many times had you looked at the ‘Gualala’ between the time you first saw her and this passing signal that you received from her?

A. Every time I crossed the bridge.

Q. How many time did you cross the bridge?

A. The bridge is about forty feet wide, or thereabouts; every time I would walk up to one side I would see her lights.

(Ap. 64) Q. Were you looking at the ‘Gualala’ when he blew his one whistle?

A. No, sir, I do not remember.

Q. Is it not a fact that you were not looking at her at that time, but that when the whistle

was blown on the 'Gualala' you then looked up and saw this red light?

A. It might be.

(Ap. 65) Q. You did not know when that red light was first observable from the 'Argyll'?

A. No, sir.

The COURT. Is that so?

A. Yes, sir.

Q. As I understand, you do not know how long the red light may have been in view from the 'Argyll' before he blew this whistle?

A. Not accurately."

The lookout on the "Argyll" as well as McAlpine, testified that the first side light that they saw upon the "Gualala" was her green light, and that thereafter they saw her red light; and, since during some portion of the time, both the green light and the red light together must have been observable from the "Argyll", there was a period of time during which those on board the "Argyll" could have seen that the "Gualala" was headed directly towards them. From the testimony, we are unable to tell how long those two lights were visible from the "Argyll". Whatever may be the conclusion as to when risk of collision between those two vessels first became apparent to those on the "Argyll", the moment both those side lights showed to those on board the "Argyll" appropriate action upon her part would have made the collision impossible.

McAlpine testified (Ap. 81):

"Q. And you never saw the red light and the green light of the 'Gualala' at any time together prior to the collision, did you?

A. No, sir.

Q. You say you saw the green light?

(Ap. 82) A. Yes, sir.

Q. And you never prior to the collision saw the two lights together?

A. Yes, sir.

Q. But you did afterwards see a red light?

A. Yes, sir.

Q. Will you tell the court how it was when the 'Gualala' turned so that you lost her green light and picked up her red light, how you did not see the two lights together?

A. *Just at that particular minute I was not looking at the 'Gualala'.*

Q. At that crucial moment, when she changed from the green light to the red light, you were not looking at her; is that the fact?

A. Not looking in that direction.

Q. Then you were not keeping a lookout on her when she turned so as to lose her green light and show her red light, is that the fact?

A. I was not looking at her at that actual moment."

Making his fault still more glaring in that respect; in absolute disregard of good seamanship, and the duty imposed upon an efficient officer in whose charge this steamer was, the mate did not even pay any attention to the bearings or the change in bearings of the "Gualala's" lights. He testified (Ap. 83):

Q. Did you at any time prior to the collision take any particular notice of the bearings, or change in bearings, of the 'Gualala's' light?

A. No, sir.

Q. You did not?

A. No, sir.

Q. And you never at any time saw her masthead light and her two side lights at the same instant?

A. No, sir."

It was as much McAlpine's duty to watch the approaching lights as it was that of Hansen. In commenting upon the action of a mate in a similar situation, in *Mircovich v. The Star of Scotia*, 2 Fed. 578, at page 595, the court said:

"Taking the evidence of the mate, as a whole, I am far from being satisfied that he kept that careful observation of the light, after he brought it on his port bow, which the situation and his responsibility required. He was not able to give such an intelligible account of its bearing and movements, down to the time the green light appeared again, as he should, and could have done, if he had been observant and alert."

The court used still stronger language in *The Pangussett*, 9 Fed. 109, at page 118:

"This failure (in directing a course) is primarily to be attributed to a very gross failure of those in charge of her to keep a good lookout. The negligence of the mate in this respect is especially reprehensible. *It is as clearly the duty of the officer of the deck, after a light is reported, to keep it in view and watch its movements*, and the effect of the movements of his own vessel taken with reference to it, as it is of the lookout to see and report a light that comes in view."

We desire to refer to the testimony of two competent ship masters to show what they thought of McAlpine's actions.

Capt. John Rinder (a ship master of 17 years' experience) (Ap. 192-3):

"Q. Captain, do you consider it a proper order to give to a quartermaster at the wheel when a steamer is approaching you upon an opposite course, with her masthead lights showing, and a point or a point and a half on her starboard bow, and apparently one mile to 3 miles away, 'don't let her come any closer'?"

A. No.

Q. Did you ever hear of such an order being given to a quartermaster?

A. No.

Q. What would be the effect of such an order?

A. The officer in charge of the ship would not know where the ship was going. He would be leaving it to the quartermaster.

Q. What is the custom at night when the officer on the bridge sees a vessel approaching—a steamer—a mile to 3 miles away, approaching on an opposite course, with reference to walking back and forth across the bridge?

A. As a general rule an officer would stand carefully in one position so as to watch the changing of the bearings of the vessel as they approached one another. That would be an act of caution, it would be an act of caution to do that.

Q. Would you, or not, consider an officer a careful and responsible officer who did other than to watch those lights all the time?

A. I would expect him to watch the lights all the time.

Q. What have you to say with reference to his responsibility when he gives such an order to his quartermaster as to 'don't let her come any closer'?

A. Well, I should not care for him to be an officer with me."

Capt. Lebbeus Curtis (a ship master of between five and six years' experience and during fifteen years from seaman to master) (Ap. 207-8):

“Q. Captain, in your opinion what should the watch officer on the bridge do with respect to a vessel approaching at night within a mile or two miles, say, whose lights show off his starboard bow within $1\frac{1}{2}$ to 2 points and apparently on about a parallel course, as to watching that vessel?

A. He should watch her very closely.

Q. If those lights upon the approaching vessel showed no change of bearing within a period of a minute or such a matter after they first came in sight, what should the watch officer, in your opinion, do with respect to paying attention to the approaching vessel?

A. He should give it the closest attention.

Q. If those lights subsequently showed any change of bearing, what in your opinion, should he do?

A. Call the master.

Q. Captain, what would you say as to the failure of a bridge officer upon the ‘Argyll’ at night who had the lights of an approaching vessel upon approximately a parallel course reported to him, and who saw the lights and determined the vessels would pass within a thousand feet of each other, and yet paced back and forth across the bridge of the ‘Argyll’ and only watched the lights of this approaching vessel when he arrived at the end of the bridge on the starboard side?

A. I should say that he was so lacking in judgment or responsibility of his position that he was not fit to have command of the vessel’s bridge.”

The foregoing testimony was left in the record with none to controvert it; it was not met and in

view of the authorities already cited it proved those in charge of the "Argyll" guilty of a gross fault, so reprehensible in itself as to put upon her, as it was in the lower court, the loss suffered in the collision.

II. FAILURE TO KEEP OUT OF THE WAY OF THE "GUALALA", HAVING HER ON THE "ARGYLL'S" STARBOARD BOW.

According to the testimony of those on the "Argyll", the lights of the "Gualala" were only seen off their starboard bow. The vessels were undoubtedly upon almost opposite courses, and as there can be no question about the courses, and as the testimony of all of those on board the "Gualala" was that the "Argyll" was almost upon the "Gualala's" port bow, the testimony of those on board one of the vessels is directly contradicted by those on board the other, but, assuming for the purpose of the argument, that those on board the "Argyll" did see the lights of the "Gualala" only on their starboard bow, it was the duty of the "Argyll" to keep out of the way of the "Gualala".

Article 19 of the International Rules is as follows:

"When two steam vessels are crossing, so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other" (U. S. Comp. Stat. 1901, page 2870).

Article 23. "Every steam vessel which is directed by these rules to keep out of the way of another vessel, shall on approaching her, if

necessary, slacken her speed or stop or reverse" (U. S. Comp. Stat. 1901, page 2870).

According to the testimony of McAlpine and the lookout on the "Argyll", the lights of the "Gualala" were, during all of the time from when they were first observed upon the "Argyll" to the moment of the collision, within $1\frac{1}{2}$ to 2 points upon the star-board bow of the "Argyll". The full compass circle contains thirty-two points. The approaching vessel was, therefore, so nearly dead ahead that her lights from the "Argyll" appeared at a point between from a little over $\frac{1}{8}$ to $\frac{1}{4}$ of the distance from dead ahead to straight abeam, or a line which would have represented the base of a right angled triangle whose other line would have been parallel with the keel of the "Argyll". The slightest consideration of this bearing shows how little the course of the "Argyll" would have had to have been changed during the time which elapsed from the moment when the lights of the "Gualala" first became observable from the decks of the "Argyll" to have put the two vessels beyond the risk of collision. It shows, also, the necessity for a careful observation of the rule laid down in Article 19.

Referring again for a moment to the time that must have elapsed between the moment when both of the side lights of the "Gualala" came into sight of those upon the "Argyll" and the time when the green light went out and the red light remained in sight (during which time McAlpine testified he

was paying no attention to the "Gualala" and his lookout testified that he made no report of seeing the two lights to the officer on the bridge), the probability is that both of these lights on the "Gualala" were in sight for some time. When they both came into sight, it was the duty of the "Argyll", as laid down by Article 23, "to keep out of the way" of the "Gualala", and "if necessary" so to do, to "slacken her speed or stop or reverse".

The decisions we have already cited as to fault, and the presumption as to the cause of collision, where one vessel is shown to have been guilty of such fault, are all applicable to this phase of the case. Even in a case where a violation of this article was proved not to have contributed to the collision but only contributed to the damage, the vessel was held in fault for such violation of the rule. How much stronger is the case at bar, where, from the facts, it is certain that this violation of the rule by the "Argyll" not only contributed to the collision, but with the other faults committed by the "Argyll" actually caused it. In *Marsden on Collisions*, page 430, the author, citing *The Thames and The Lutetia*, 19 App. Cas. 640, 649, states:

"It appears that neglect to obey Article 23 will cause a ship to be held in fault, as the omission, though it could not have contributed to the collision, might have caused or contributed to the damage."

A case somewhat similar to that of the case at bar is that of *The Dorchester*, reported in 21 Fed. 889. The opinion of the District Court was adopted by the Circuit Court of Appeals as its opinion, in 134 Fed. 1023. The collision occurred at night with the weather clear, as it was in this case. In the course of the opinion, the court said:

“I think it apparent that the ‘Dorchester’ was in fault. At the first she had the ‘Thornhill’ on her starboard side, and was bound to keep out of the way, and to do it in such wise as not to embarrass and confuse the pilot of the other vessel. What she did, apparently, was, when directly ahead of the ‘Thornhill’, and quite close, she made two changes of course. First she ported, opened up her red light, and showed both her lights nearly directly ahead of the ‘Thornhill’, leading those on the ‘Thornhill’ to infer that she was changing to starboard intending to pass the ‘Thornhill’ on the port side. * * * (After a full statement of the testimony and after remarking that when the ‘Dorchester’ had drawn ahead she exhibited both side lights, the court continued.) This was an indication of the expected change of course. It was a change intended by the navigator of the ‘Dorchester’ and made in pursuance of his intention to pass the ‘Thornhill’ port to port, and because, as he testifies, he thought it was his duty to port. The pilot of the ‘Thornhill’ so understood and answered it, and blew one blast to announce his acceptance, consent and understanding; and in obedience to Rule 1, and to assist in the maneuver, he put her helm to port. Just about this time the ‘Dorchester’, without any fault on the part of the ‘Thornhill’, so far as the proofs disclose, saw the ‘Thornhill’s’ green light, and ordered

the 'Dorchester's' helm hard a'starboard. Why it was the navigator of the 'Dorchester' when he heard the one blast signal from the Thornhill, should have kept his helm hard a'starboard, it is difficult to comprehend. He had just been under a hard a'port helm, and his ship could not have got much swing to the eastward, and it is manifest, as the vessels were so close that the 'Dorchester' could not change back to the starboard, it would be still less possible for the 'Thornhill', which had been all along moving to the eastward. It being the duty of the 'Dorchester', when she showed her lights ahead of the 'Thornhill' to pass to the port, and her navigator having so understood her duty, and intended to perform it, what was the duty of the 'Thornhill'? Clearly, it was her duty to proceed upon the assumption that the 'Dorchester' would do her duty and obey the rule, unless it became reasonably certain that she would not do so. *The Delaware*, 161 U. S. 459; 40 L. Ed. 771; *The America*, 37 Fed. 813; *The Victory*, 168 U. S. 412; 42 L. Ed. 519; *The Thingvalla*, 48 Fed. 765."

The court held the "Dorchester" in fault for the collision.

In *The Emma Kate Ross*, 46 Fed. 872, a collision case where two vessels were under crossing courses, on a bright moonlight night, each vessel was seen from the other a considerable time before the collision. The red light of the tug was first seen from the steamboat, which was going down stream, and a little later the green light also, when she gave a signal by one blast of her steam whistle and held on her course. The steam tug answered with one blast and did not change her course until too

late to avoid collision. The court held that under the provisions of Rule 19 the steam tug was in fault for not having avoided the collision when she had the steamer on her starboard side.

Another case which lays down the same rule is that of *The Helena*, 36 Fed. 463. Cross libels were filed. The "Helena" claimed that the "O'Neil" (the other vessel) was first observed when about a mile distant and about a point abaft the "Helena's" starboard beam; that the vessels seemed to be gradually approaching, when suddenly, without warning, the "O'Neil" starboarded her helm, and undertook to cross the "Helena's" bow. The court held that the claim of the "Helena" was not well founded and in discussing the situation said:

"In this situation of the vessels, the duty of the 'Helena' is prescribed by Rule 19 (Rev. St. sec. 4233), 'If two vessels under steam are crossing, so as to involve risk of collision, the vessel which has the other on her starboard side shall keep out of the way.' * * * Whether her (the 'Helena's') failure to observe the course and situation of the 'O'Neil', and to take proper measures to avoid the collision, resulted from neglect to maintain a proper lookout, or from other cause, need not be determined. It was her duty to keep off; and no justifiable cause for failing to do so being known, she must be held to have been in fault."

RISK OF COLLISION.

In the steering and sailing rules (U. S. Comp. Stat. 1901, page 2869) in the preliminary statement and as a part of the rules, is the following:

ASCERTAINMENT OF RISK OF COLLISION.

“Risk of collision can, when circumstances permit, be ascertained by carefully watching the compass bearing of an approaching vessel. If the bearing does not appreciably change, such risk should be deemed to exist.”

Article 18. “When two steam vessels are meeting end on, or nearly end on, so as to involve risk of collision, each shall alter her course to starboard, so that each may pass on the port side of the other.”

We are mindful of the fact that McAlpine claimed that there was no risk of collision from the time the lights of the “Gualala” were first seen upon the “Argyll” until he saw the red light of the “Gualala”, but *this* was but *his* conclusion. His testimony was (Ap. 60):

“Q. Then I understand she kept on coming towards you and you going towards her; a minute and a half after that, approximately, you heard one blast of her whistle?

A. Yes, sir.

Q. How much did her bearing change?

A. It was still two points on the starboard bow.

Q. In other words, coming up towards you still on your starboard bow?

A. Yes, sir.

Q. And she had only changed her bearing $\frac{1}{2}$ point during that time?

A. Yes, sir.”

To appreciate the importance of this testimony, it must be borne in mind that the two vessels were at that time both running at approximately eight knots an hour, or each running approximately 810

feet a minute, making the combined speed of the two vessels 1620 feet each minute. According to McAlpine's testimony there was practically no change in the bearings of the lights of the "Gualala" during any of the time her lights were in sight.

The term "risk of collision", and the rules above referred to, were discussed in *The Philadelphia*, 199 Fed. 299, where, at page 302, the court said:

"The primary fact to be ascertained from the evidence is whether the tug and schooner were proceeding in such direction as to involve risk of collision.

(1) The expression 'risk of collision' has a different meaning from the expression 'immediate danger', as used in the twenty-seventh article. 'Risk of collision' means 'chance', 'peril', 'hazard', or 'danger of collision' merely, and not immediate danger. *The D. S. Gregory and The George Washington*, Fed. Cas. No. 4100. 'Risk of collision' means, not merely certainty of collision, if no efforts be made to avert it, but danger of collision; and there is danger or risk of collision whenever it is not clearly safe to go on. *The Aurania and the Republic* (D. C.), 29 Fed. 98, 123.

In the case of *The Milwaukee*, Fed. Cas. No. 9626, it is said:

'Risk of collision begins the very moment when the two vessels have approached so near each other, and upon such courses, that, by departure from the rules of navigation, whether from want of good seamanship, accident, mistake, misapprehension of signals, or otherwise, a collision might be brought about. It is true that prima facie each man has a right to assume that the other will obey the law. But

this does not justify either in shutting his eyes to what the other may actually do, or in omitting to do what he can to avoid an accident made imminent by the acts of the other. I say the right above spoken of is *prima facie* merely, because it is well known that departure from the law not only may, but does, take place, and often. Risk of collision may be said to begin the moment the two vessels have approached each other so near that a collision might be brought about by such departure, and continues up to the moment when they have so far progressed that no such result can ensue.' "

The court found the "Philadelphia" liable for the collision, on the ground that she had the other vessel upon her starboard bow, making it her duty to keep out of the way.

We contend that even if the "Gualala" were two points on the starboard bow of the "Argyll" there was risk of collision, and, under the rules, the "Argyll" should have ported her helm and gone to starboard. Our contention in this respect is borne out by the rule laid down in *The Odessa*, 4 Asp. Mar. C., 493, 46 L. R. 77. The "Murton" was coming down a straight course about 5 P. M., with a light wind, when the masthead light and green light of a steamer, the "Odessa", were seen at a distance of about a quarter of a mile and bearing about one point upon the starboard bow of the "Murton". The helm of the "Murton" was starboarded a little and she proceeded so as to pass the "Odessa" starboard side to starboard side, but the "Odessa", as she came nearer, shut in her green

light and opened her red light and caused immediate danger of collision. The helm of the "Murton" was put hard a'starboard and her engines set at full speed ahead, but the "Odessa", with her stem, struck the starboard quarter of the "Murton". Whistles were not blown. The rules we have above referred to were commented upon in the decision. The lower court found the "Murton" in fault for directing her course to port instead of to starboard, and the upper court on appeal, in affirming the decision of the lower court, used the following language:

"It seems to me that in this case we must affirm the decision of the learned judge of the court below. I take that judgment to be, that the position of the vessels, even as given by the witnesses for the 'Murton', was in the opinion of the assessors below such, not that there must have been a collision if they proceeded in the courses they were then upon, but that there would have been risk of collision in this sense, that, if the vessels had kept on, they would have passed so closely to each other that any small obstruction in the river, or slight variation in their course, would have caused a collision. In other words, they were in such a position that, if they had continued their courses, there would have been reasonable risk of a collision. Now, it is said that the vessels were going on nearly parallel courses, and that they were a quarter of a mile off when they saw each other's green light. That is true. But how did each vessel see the green light of the other? Those on board the 'Murton' saw the green light of the 'Odessa', a point on their starboard bow. That might be, although the vessels were not on exactly parallel courses;

but if one vessel was only slightly pointing to the other the two vessels might have crossed one another's course. It is only on the supposition that both vessels would keep on parallel courses that they would pass each other without collision. Mr. Butt says that so long as green light was to green light there would be no danger of a collision; and he says, if we hold to the contrary, that will be making a hard and fast rule. On the contrary, I think that, if we adopted his theory, we should be making a hard and fast rule. Whether there is risk of collision must be a question of fact and skill, to be decided by the learned judge, with the assistance of assessors, on the evidence brought forward. If the vessels had been three or four points off, showing green light to green light, I would say that there was no risk of collision; *but when you come to two points, I do not know exactly what the risk would be.* But when you come to one point, it seems to me, as far as I can understand the matter—and I have heard it very often discussed, and evidence given on the point—that it is very difficult to show that there is not risk of collision. With three points there is hardly any risk, but even then it must depend on the circumstances of the case. The whole question is one of fact; and the whole point to be decided in this case is, whether the vessels were in such a position when they sighted each other that there was a risk of collision. The moment that that question of fact is decided, in all circumstances the rule becomes absolute that the vessels must port their helms. In the present case the 'Murton' starboarded her helm, and the other vessel, the 'Odessa', ported. That being so, I am of the opinion that the decision of the court below must be affirmed."

It will be noted that the court believed that there was *risk of collision* when the lights of the approaching vessel *were a point off the starboard bow*; that *they thought there would be* if they had been *two points off the bow* and even with three points thought there would be hardly any risk of collision, as they put it, still it must depend on the circumstances of the case. That there was risk of collision in this case with the "Gualala's" lights a point and a half or two points off the starboard bow of the "Argyll" is beyond question. It is proved by the fact that the collision occurred.

Another English case, in which the court passed upon the question of risk of collision and what is meant by meeting "end on", is that of *The Earl of Elgin*, 1 Asp. M. S. 150; 4 P. C. 1. The facts in that case were very similar to the facts in the case at bar. A collision occurred between two steamers at 10:30 P. M., on the coast of Yorkshire. The weather was fine and clear, the wind light, the "Jesmond" steering north northwest, making seven or eight knots, when the masthead light and then the side lights of the "Elgin" were made out a distance of a mile and a half ahead. According to the evidence of the second mate of the "Jesmond", the helm of the "Jesmond" was ported and the vessel went off about a point and a half and was then brought back to within half a point of her course. When the vessels were about 300 yards apart the green light of the "Elgin" opened out and the second mate immediately

gave the order "hard a'port" and stopped his engines. About a minute after, the two vessels came into collision. The "Jesmond" struck the "Elgin" on the forward starboard side and she sank. The "Elgin" claimed that she was proceeding at seven or eight knots an hour, that the masthead lights and the green light of the "Jesmond" were seen on the starboard bow of the "Elgin"; that the "Elgin" was kept on her course with a view to pass on the starboard side of the "Jesmond" (just as the "Argyll" did in this case) until the "Jesmond", by porting her helm, opened her red light to the "Elgin", causing danger of an immediate collision, whereupon the helm of the "Elgin" was starboarded. From the evidence of the man on lookout upon the "Elgin", it appeared that he first saw the red light of the "Jesmond" about half a mile off and thereupon the order was given to put the helm hard a'starboard. No one apprehended danger of collision until the "Elgin" starboarded.

The facts in the case at bar seem, on principle, to be almost exactly the same as those in *The Earl of Elgin*. The "Jesmond" was in about the situation in which the "Gualala" was here, and pursued the same course. The "Elgin" was in about the situation the "Argyll" was here, and the officers in charge of her made up their minds that they would pass the other vessel upon their starboard side, just as McAlpine did. For so doing

the court found the "Elgin" liable for the collision, and said:

"In this case their lordships must hold it has been conclusively found that the two colliding vessels were meeting each other end on, or nearly end on, within the meaning of the 13th sailing rule; that the 'Jesmond', in obedience to the rule, ported her helm—whether enough or not is a question which will be afterwards considered; that the 'Earl of Elgin' violated that rule by starboarding instead of porting, and thereby put herself clearly in the wrong, and became *prima facie* responsible for the collision which took place."

After discussing a finding of the lower court, that the "Jesmond" should have slackened her speed and reversed, the lower court, upon the point, said:

"A fortiori, had the 'Earl of Elgin' ported her helm and obeyed the rule, as she was bound to have done, the distance between the two vessels would have been increased, and the collision would have become still more improbable."

The "Elgin" was then held solely responsible for the collision on the grounds stated in the quotation.

The case of *The Wm. Chisholm*, 153 Fed. 704, already cited, is another case in which the court rules upon the duty of a vessel approaching another nearly end on, and in doing so said:

"We find upon the concurrence of testimony of both sides that the two vessels were approaching each other head and head, or nearly so, for a length of time before they would meet sufficient to make provision for passing. If they continued on such courses, there would

be risk of collision. If the 'Oceanica', before the vessels were laid on these courses, but in anticipation thereof, had given a signal of one blast, as it was her duty to do, and that had been assented to, she had no right to change it, being under no necessity, and the other vessel was bound to assume that they were to pass port to port until the 'Oceanica' gave her clear signs that she was not complying with the agreement."

In view of the admission in the log of the "Argyll", that after seeing the lights of the "Gualala" the course of the "Argyll" was changed $\frac{1}{2}$ a point to port, and the other extraordinary order which McAlpine testified he gave to the man at the wheel, "Don't let him come any closer"—the meaning of which could only be that he instructed the man at the wheel to keep the lights of the "Gualala" in the same relative position upon the starboard bow of the "Argyll"—which significant combination of facts we have already referred to,—the facts, in the case of *The Livingstone*, 113 Fed. 879, are so unusually similar that we shall quote at length the facts and the decision.

"When the vessels first sighted each other they were about four miles distant. Their mast-head lights were first seen. They were then meeting nearly end on, and rule 17 (which requires that each shall alter her course to starboard so that each shall pass on the port side of the other) became applicable. When about a mile and a half distant the 'Traverse' saw the red and green lights of the 'Livingstone', and blew one blast, as required by rule 23, to indicate that she was going to the right. She ported half a point. This was correct

seamanship. The 'Livingstone' did not answer this signal, and continued on her course. The first mate of the 'Livingstone', who had charge of her navigation at the time, testifies that he did not hear this signal; in fact, no one on the 'Livingstone' heard it, if the testimony of her crew is to be accepted. There is nothing at all improbable in this story. The whistle of the 'Traverse' was clogged with water. Her mate testifies that he blew an unusually long time before he could get a distinct response, and as the wind was blowing the sound directly away from the 'Livingstone' it is not surprising that it was not heard. When the vessels were from three-quarters of a mile to a mile apart, the 'Traverse', seeing at that time only the range and red light of the 'Livingstone', repeated the signal, and again ported half a point. There was no response from the 'Livingstone'. When the distance had been reduced to a quarter of a mile, the 'Traverse' blew a signal of one blast, and ported a third time. This signal was heard by the 'Livingstone' but still there was no answer. Assuming the 'Traverse' to be guilty of all the faults charged against her, what was the situation at the time the third signal was given? The vessels were then about a quarter of a mile apart. Each could be seen by the other without the aid of lights. The 'Livingstone' knew that the 'Traverse' was directing her course to starboard. She knew it from the signal, and it was perfectly obvious without the signal. * * *

What then was the manifest duty of the 'Livingstone'? There can be no doubt that she should have ported also. Even had she kept her course, there could have been no danger. There was but one thing possible for the 'Livingstone' to do at this time to bring the boats into collision, namely, to starboard, and that was the one thing she did do. The proof establishes this proposition beyond a doubt. * * *

It was, no doubt, an amazingly stupid piece of navigation, but not unprecedented. Whether the mate called out 'starboard' when he meant to say, and possibly believed he did say, 'port', or whether the wheelsman heard the order 'starboard', and did the opposite, we do not know. Such things have happened before, and an appreciation of the extent of human infirmity, even among men experienced and ordinarily cautious, makes us unwilling to accept the theory of the court below that no navigator could have committed such an error (assuming him to be sane and not intoxicated) unless in some way or other the other vessel misled him. We approach the consideration of the faults charged against the 'Traverse', therefore, without the postulate that an accident of this character, where the one vessel is concededly guilty of such gross fault, 'could hardly have occurred without the concurring carelessness of the other'. On the contrary, we understand the rule as laid down by the Supreme Court to be that where fault on the part of one vessel is established by uncontradicted testimony, and such fault is, of itself, sufficient to account for the disaster, it is not enough for such vessel to raise a doubt with regard to the management of the other vessel. There is some presumption, at least, adverse to its claim, and any reasonable doubt with regard to the propriety of the conduct of such other vessel should be resolved in its favor. *The City of New York*, 147 U. S. 72, 85; 37 L. Ed. 84; *Ludvig Holberg*, 157 U. S. 60, 71; 39 L. Ed. 620; *The Umbria*, 166 U. S. 404, 409; 41 L. Ed. 1053; *The Victory*, 16 U. S. 140; 42 L. Ed. 519.

"The district court found that when the vessels were a quarter of a mile apart, and the third whistle of the 'Traverse' was heard on the 'Livingstone', the vessels were in a position of safety, which could be made unsafe

only by the starboarding of the 'Livingstone'. Had the latter ported, or even held her course, there could have been no danger. The vessels would have passed each other with a broad margin of safety. The witnesses from the 'Livingstone' unite in the proposition that the position then was one of safety, though some of them put the 'Traverse' on their starboard instead of their port bow, and one of them, the mate, insisted that he ordered no change of wheel, and that none was made. As before stated, he was discredited by evidence from the deck of his own vessel, the wheelsman testifying that the mate ordered the wheel hard a'starboard; that he put it there, where it remained down to collision; and that the captain, coming on deck, then found it hard a'starboard, which the captain did not deny. The testimony overwhelmingly supports the proposition, stated in the opinion of the district court that 'the "Livingstone" took a sharp swing to port when the last signal was given from the "Traverse" and when, * * * had she held her course or directed it to starboard, the accident would not have occurred. * * *

If the "Livingstone" had not starboarded at this supreme moment, she would have passed the "Traverse" without difficulty'. This is the only fault which the district court finds on the part of the 'Livingstone', and, that vessel not having appealed, the accuracy of that finding is conceded. But at the moment the last signal sounded, and before the mate of the 'Livingstone' ordered her wheel hard a'starboard, the vessels were a quarter of a mile apart. He could see the 'Traverse', while her signal notified him as plainly as any light would have done that she was directing her course to starboard. Indeed, when pressed upon cross-examination, this witness admitted that the one whistle heard by him gave him all the informa-

tion needed, and that the absence of the red light made no difference. Of this statement it is said that it was made by a witness who did not commend himself to the court, and whose narrative in other particulars was found to be untruthful; but the situation itself gives sufficient support to this admission of the mate. Any intelligent man must have known from the whistle in what direction the 'Traverse' was going to swing, and no light was needed to tell him that if he starboarded he would bring his own boat into peril. If failure by the 'Traverse' to display a red light had put the vessels (as a consequence of navigation prior to the sounding of the last signal) 'in a position of danger, where the slightest fault might bring disaster', her failure in that regard might fairly be held to have contributed to the catastrophe. But it must be accepted that the position when the last signal sounded was one of safety, and that peril and disaster came thereafter only as the result of an amazing piece of stupidity in the navigation of the 'Livingstone'."

As a matter of fact the testimony of McAlpine, that he changed the course of the "Argyll" to port, when the lights of the "Gualala" were first seen; the entry to that effect in the log of the "Argyll", and the further fact that he told the man at the wheel not to "let him come any closer"—the last order practically putting the man at the wheel in control of the "Argyll" until the "Gualala" should pass—all furnish, to our minds, an absolute explanation of how the collision occurred. The "Gualala", seeing the lights of the "Argyll" ahead and nearly head on,—as Gibbs put it—"with

her masthead lights nearly in line", indicating that the "Argyll" was coming almost directly towards the "Gualala", the "Gualala" directed her course somewhat to starboard, in accordance with Rule 18, and finally blew a passing signal indicating the change to starboard and her intention to pass the "Argyll" upon her port side. In the meantime, on board the "Argyll", the man at the wheel, doing as he was told, temporarily disregarding the course upon which he was steering (as out in the ocean as they were, miles from land, the loss of time resulting from a temporary change of course occupying no longer than would have been necessary to pass the other vessel and get clear, would mean little), and not allowing the "Gualala" to "come any closer", payed off to port, just as was indicated by the log. The probability is, that instead of paying off only half a point, the helmsman kept on going in that direction in order to keep the lights of the "Gualala" at the same point on his starboard bow—a point and a half or two points, as all of those on board the "Argyll" testified—until, in following up the relative direction in which, upon the opposite course, the "Gualala" was going, McAlpine, who was paying so little attention to the "Gualala" as not to be even looking at her lights (except to look at them after he had paced eighty feet back and forth across his bridge), suddenly realized that he was in a dangerous predicament. Then, when too late to avoid the danger, he suddenly

changed his course, perhaps about the time the captain arrived on the bridge.

Although it does not seem possible that any sane man could have given the order to go to port under the circumstances in which these two vessels were meeting, as was said in *The Livingstone*, *supra*:

“It was, no doubt, an amazingly stupid piece of navigation, but not unprecedented. Whether the mate called out ‘starboard’ when he meant to say, and possibly believed he did say, ‘port’, or whether the wheelsman heard the order ‘starboard’ and did the opposite, we do not know. Such things have happened before and an appreciation of the extent of human infirmity, even among men experienced and ordinarily cautious, makes us unwilling to accept the theory of the court below that no navigator could have committed such an error.”

Although all of the expert witnesses put on in behalf of the “Argyll” testified that the diagram of Gibbs, showing how, in his opinion, the collision occurred, could not represent what actually happened if the “Argyll” directed her course to starboard, still they all admitted that if the “Argyll” directed her course first to port, instead of to starboard, the collision could have occurred, and the two vessels could have come together at exactly the angle the proofs show them to have impinged upon each other. The proofs that the “Argyll” *did* go to port lie in the entry made in her log that she changed her course one half point to port, and the order McAlpine gave to the man at the wheel, “Don’t let him come any closer”.

III. FAILURE TO AVOID THE "GUALALA" AFTER ANSWERING HER ONE BLAST OF THE WHISTLE.

The "Gualala" had a right to assume that when the "Argyll" answered her one blast of the whistle that the "Argyll" would go to starboard. We are fortunate in being able to sustain our position as to each of the points we have made against the "Argyll" by citations from the Supreme Court of the United States. We feel that we might almost submit this case to the court upon one citation, that of *Belden v. Chase*, 150 U. S. 674; 37 L. Ed. 1218.

The action was commenced in the state court, tried before a jury and carried to the Supreme Court of the United States.

We quote from the head note of the decision:

"Where two steamers are meeting end on, or nearly so, if the pilot of either blows a single whistle,—the signal of passing to the right,—and the other steamer answers by a single whistle; each steamer is bound to pass to its own right; and if afterwards one of the steamers changes the course by blowing two whistles, they must be given in time to enable the steamers to change their course and to pass safely to the left, or the steamer giving the two whistles is guilty of negligence if a collision thereby occurs."

And from the decision itself at page 1228 of 37 L. Ed:

"At this point (a quarter of a mile from the point of collision) the pilot of the 'Yosemite' gave a short and distinct blast from his whistle

as required by law, as a signal of his intention to pass to the port side of the 'Vanderbilt', and this the pilot of the 'Vanderbilt' answered by a similar blast, *whereupon under the rules it became imperative for the steamers to pass to the port side of each other. The 'Vanderbilt' was bound to go to the right after the bargain was made by the exchange of single whistles*; but instead of doing this, and immediately after, the 'Vanderbilt's' pilot gave two whistles, which it is claimed on behalf of the plaintiff were answered by the whistles from the yacht. This is denied by the latter; and even if true, an assent to the 'Vanderbilt's' change was at the latter's risk. The 'Vanderbilt's' pilot on the instant sheered his boat to port, then slowed, and the collision occurred, the 'Vanderbilt' being struck nearly at right angles."

Apparently, the only difference between the facts in the "Vanderbilt" case and those in the case at bar is that the "Argyll" claims to have blown three whistles, instead of two, after having answered the one whistle from the "Gualala".

Another case to the same point is that of *Lake Erie Transp. Co. v. Gilchrist Transp. Co.*, 142 Fed. 89, where two vessels when a mile or so apart exchanged passing signals of one blast. The night was clear but the vessels struck each other at an angle of from $1\frac{1}{2}$ to $2\frac{1}{2}$ points. In holding one of the vessels responsible for the collision the court said:

"Risk of collision was not involved if each did what it was bound to do under the usage of navigation and particularly under the port

to port agreement. *The Victory*, 168 U. S. 410, 420, 18 Sup. Ct. 149, 42 L. Ed. 519; *The Waldo*, 100 Fed. 502, 40 C. C. A. 517. * * *

"The 'Rome' was not bound to anticipate that the 'Mack' would not act lawfully and comply with her agreement, and so long as there was apparent reasonable opportunity for her to swing and clear the 'Rome' the latter might assume that she would do so. This is the doctrine as we read and construe the cases of The Free State, 91 U. S. 200, 205; 23 L. Ed. 299; The Servia, 149 U. S. 144, 154; 37 L. Ed. 681; The New York, 147 U. S. 72; 37 L. Ed. 84; The Victory v. The Plymothian, 168 U. S. 410, 427; 42 L. Ed. 519, and the case of The Elphicke, 123 Fed. 405, 407, a case decided by this court, the opinion being by Judge Sevens. Neither was the 'Rome' required to consider the possibility that the 'Mack' would be unable to comply with her agreement or that she would, through negligence, persist too long in her original course.

"Within the meaning of the rule, 'risk of collision' is not constituted when by compliance with a passing agreement they can certainly pass in safety and each vessel may be navigated upon this supposition until the intervention of something which should operate as notice to an officer of skill and prudence of the presence of danger."

Another case to the same point is that of *Ohio Transp. Co. v. Davidson S. S. Co.*, 148 Fed. 185, where a collision was held solely due to the fault of one vessel in failing to conform to a passing agreement. One of the vessels signalled the other when about $\frac{3}{4}$ of a mile away. The signal was answered and accepted and in that case, as in this,

the answering vessel attempted to excuse the subsequent collision by claiming that the signal was not sounded until the vessels were so close to each other (oddly enough in that case the witnesses for the vessel in the situation of the "Argyll" also claimed the other vessel was within three lengths of her) that she could do nothing but accept the proffered passing arrangement. The court dismissed this claim with the remark that it regarded it "as a substantial confession of most palpable negligence".

In a very early case, *The Edwin H. Webster*, 18 Fed. 724, where two steam tugs had exchanged mutual assenting signals as to the mode in which they would pass each other, and a collision ensued, and the libelant's tug had the other on her own starboard hand, the court held that the burden of proof was upon the libelant to show by a reasonable preponderance of evidence that the respondent's tug was in fault, and the libel was dismissed.

A case often quoted with approval and one in which a careful review of the evidence is had, is that of *The F. W. Wheeler*, 78 Fed. 624, where a vessel answering a passing signal of one blast claimed afterwards to have been aground. Here the "Argyll" claims that when she answered the passing signal of one blast she was either so far to the starboard of the "Gualala", or so close in front of her, as to make the suggested maneuver

out of the question. The court in the *Wheeler* case, discussing the excuse, said:

“It was clearly a fault on her part to accept that signal and give her answer to assure the ‘Chamberlain’ that she was under command. We are strongly disposed to agree to that conclusion upon the circumstances of this case (just as it would seem to us we have the right to assume that the ‘Argyll’ when it answered our passing signal was in a position where she believed the maneuver was a proper one and that the two vessels could pass each other port to port). * * * The single blast was a proposition to pass port to port and was a proper signal for these vessels, being ‘head on’, or ‘nearly head on’. * * * The establishment of an agreement to pass port to port, which was clearly the proper proposition under Rule 18, and under the supervising inspectors’ rule above referred to, for the ‘Chamberlain’ to propose, placed each vessel under the equal obligation of keeping to the port of the other. The ‘Chamberlain’ was under no higher obligation to go to the westward of the ‘Wheeler’ far enough to pass her at a safe distance, than was the ‘Wheeler’ to go to the eastward far enough to pass the ‘Chamberlain’ safely. * * * The improbability that an experienced and expert navigator would have invited the ‘Chamberlain’ to continue on a course which would enable her to pass the ‘Wheeler’ at a safe distance, but which, if so, would inevitably bring her in collision with the ‘Ashland’ (the ‘Wheeler’s’ tow), is so great as to lead us to doubt the reliability of the evidence relied upon to show that neither the ‘Wheeler’ nor ‘Ashland’ was under headway or control when signalled by the ‘Chamberlain’.”

The rule that if two vessels are meeting end on, or nearly so, so as to involve risk of collision, the

helms of both should be put to port so that each may pass on the port side of the other has been laid down in *The Nichols*, 7 Wall. 656; 19 L. Ed. 157; *The Annie Lindsley*, 104 U. S. 185; 26 L. Ed. 716; *The Maggie J. Smith*, 123 U. S. 353; 31 L. Ed. 178; *The Nacoochee*, 137 U. S. 341; 34 L. Ed. 691; *The Blue Jacket*, 144 U. S. 39, 36 L. Ed. 478.

In *The Nichols*, *supra*, it was held that a vessel which, meeting another end on, puts her helm to starboard and is run down and sunk by the other vessel has no claim on her for damages.

PRESUMPTION IN FAVOR OF THE "GUALALA" BY REASON OF

(1) Contradictory testimony of members of crew of "Argyll".

(2) Condition of "Argyll's" log.

The testimony of those in charge of the "Argyll" could hardly have been more contradictory. That of McAlpine particularly so.

The court below was, we think, convinced of the absolute unreliability of the testimony of this witness, McAlpine. He contradicted himself over and over again.

He testified (Ap. 68) that his course prior to the collision was northwest, $1\frac{1}{2}$ west, and that he continued on this course until after the passing signal given by the "Gualala" was answered by the "Argyll", when he changed his course to hard

a'port; that no other change of course was made by the "Argyll" prior to the collision. Later (Ap. 79) he testified (after saying that to order his wheelman not to "let her come any closer" is not considered a change of course);

"Q. But you did change her course?

A. Yes, sir. I spoke to the wheelman, I said, 'Do you see that fellow, Andrew?' He said, 'Yes'. I said, 'Don't let him come any closer'."

He testified at one time (Ap. 70) that the collision had occurred by the time the captain arrived on the bridge. His attention was then called to his testimony, given under oath before the United States Inspectors, in which he said that the captain asked him when he came upon the bridge, "Where is that fellow?" and he answered, "He is on our starboard bow", and the other statement before the inspectors that the "Gualala" was a ship's length away by the time the captain had arrived upon the bridge. Changing his testimony again, he said, the captain *was* on the bridge at the time of the impact.

He contradicted himself three times about the distance the "Gualala" was away when he first saw her. He first testified (Ap. 53), "When I first saw the 'Gualala', she was then about inside a mile away." Before the inspectors (Ap. 57), a month and a half after the collision, he testified that when he first saw her she was about three miles away. When pressed for an answer as to which was correct (Ap. 57) he said, "If I said it was three miles

it might have been three miles; it might have been two miles. I say a mile and a half now, and mile and a half is what I say now."

Again (Ap. 62)—still attempting to explain why he had testified before the inspectors—

"Q. How far away was she when you first saw her, when the lookout reported her?

A. Perhaps half a mile."

he saw no other way out of his difficulty than to testify:

"I think you had better take the mesne of all those, I am not absolutely certain whether she was three miles, or half a mile or a mile and a half."

As to when the red light on the "Gualala" first showed, he testified first (Ap. 60), that the red light did not show before the "Gualala" blew one whistle. Then, when questioned closely about it, he modified his statement (Ap. 61) and testified that the one whistle called his attention to the "Gualala" and *then* he saw her red light for the first time.

He also testified (Ap. 66) that the "Argyll's" course was not altered $\frac{1}{2}$ a point to port, but this was contradicted by the entry in the log "Altered course $\frac{1}{2}$ point to port. Received one whistle from vessel", and he finally explained (Ap. 79) that the "Argyll" may have swung $\frac{1}{4}$ to $\frac{1}{2}$ a point; that he did not consider that a change in course.

He was on the same vessel for two or three months with the captain who wrote in the log book

during that time, and still he would have us believe that he not only could not recognize the captain's handwriting (Ap. 66), but did not know the first mate's or the second mate's, both of whom wrote up their watches on the bridge in the same log book he wrote his.

He testified (Ap. 47) that he answered the "Gualala's" whistle with one from the "Argyll", and (Ap. 77) that he blew three whistles to show he was going backwards. Then, when asked whether he blew an alarm signal, he said that he blew four whistles. When squarely asked "Did you ever blow an alarm signal?", he replied "No, sir." When his attention was called to the report made to the United States inspectors, "I ordered my helm to port, answering his signal and seeing we were in close proximity, gave three whistles and went full astern with engines. I then gave the danger signal of four whistles, the other vessel being in such a position that I considered we were unlikely to pass clear," he said that he remembered making the report, and that if he stated there that he blew it (meaning the alarm signal of four whistles) that he did blow them. No one else testified that four whistles were blown. No one else heard them and, of course, they were *not* blown.

His testimony before the United States inspectors, taken within a month and a half after the collision was, as to many points, absolutely at variance with his testimony given before the court. His

manner when he attempted to explain away these contradictions, carried with it either one of two conclusions; the man's recollection was so vague that he actually did not remember the circumstances of the collision, or he was wilfully refraining from telling the truth. We are not charitable enough to believe that the explanation lies in the first of these, even though his testimony was given a year after the collision.

The testimony of Gibbs, the man at the wheel, and the lookout upon the "Gualala" were all taken within a few weeks after the collision and while the facts were all fresh and clear in their minds. Their stories are absolutely straightforward and their testimony bears every indication of honesty and truthfulness.

We feel that we come clearly within the language of the court in *The Eagle Wing*, 135 Fed. 826, where, in speaking of the weight that should be given to the testimony of the respective parties to the action, the court said:

"Where the testimony in behalf of vessels in collision is conflicting and uncertain as to what was done upon one vessel, and the testimony on behalf of the other vessel as to what was done is clear and positive, or where the testimony of one of the vessels comes from intelligent, experienced, and apparently reliable witnesses, and that of the other from ignorant, inexperienced, shiftless, and manifestly unreliable persons, the court in admiralty, as in all other classes of litigation, must take into account the existence of such conditions in fixing the re-

sponsibility for the collision. In the case of the *Genevieve* and *The Vuncan* (D. C.), 96 Fed. 859, affirmed 106 Fed. 989, 46 C. C. A. 87, it was said, in determining a conflict of testimony as to which of two vessels was in fault for a collision, that the probabilities and presumptions based upon skill, knowledge, and ability of the crews of the respective vessels, which was the best man, and the least likely to make a mistake should be taken into consideration by the Court. *The Alabama* (D. C.), 17 Fed. 847; *The Mary Manning*, 98 Fed. 1000, 39 C. C. A. 377; *The Livingstone*, 113 Fed. 879, 51 C. C. A. 560; *The Hartford* (D. C.), 125 Fed. 559."

At the time McAlpine testified under oath before the inspectors he told one story; before the court he told another. Discrepancy after discrepancy was pointed out to him upon cross-examination and his manner upon the stand was enough to discredit him without the differences called to his attention. Distances, time and actions were all mixed up in one confused jumble of uncertainty. We felt justified in asking the lower court to reject his testimony *in toto*, and from the findings of fact in the opinion of the court below, it is apparent that court did so.

"The cardinal rule, which has served in all ages, and been applied to all conditions of men, is that a witness wilfully falsifying the truth in one particular, when upon oath, ought never to be believed upon the strength of his own testimony, whatever he may assert."

Judge Betts in *U. S. v. Osgood*, 27 F. C. No. 15, 971a.

The testimony of Gibbs, the officer in charge of the "*Gualala*", on the other hand, was clear and

convincing, and further than that was corroborated by the testimony of both of the men on the deck of the "Gualala" immediately prior to the collision.

The credibility of the testimony of Capt. Dickson was questionable in several particulars. He certainly made different statements at different times as to where he was and what he was doing when he heard the passing signals exchanged between the two vessels. His admissions the day after the collision as to what he did and what he said when he rushed to the bridge of the "Argyll", immediately prior to the collision, as testified to by Latz, Abrahamsen and Stack, were denied by him, but his own first officer said that when he arrived upon the bridge he said "Where is that fellow?" and the mate said he was answered "There, on our star-board bow." The captain, on the contrary, denied having said a word until after the collision. If his testimony given at the trial could be believed, he heard the passing signals exchanged between the two vessels, hurried to the bridge, saw the other vessel directly in front of the "Argyll" and in such a position that collision was inevitable, and yet stood mute without attempting to take any action to lessen the effect of the collision. It is beyond the bounds of reason that the captain of a ship would go upon his bridge and see his vessel about to run down another and yet stand mute.

Konstant Latz (Ap. p. 146), when asked whether, after the collision he heard Captain Dickson say anything about how the collision occurred, testified:

“The captain of the ‘Argyll’ had been explaining how the collision was. I could not remember very much because I was full of pain, but I remember one thing, he told the quartermaster to put the wheel hard to starboard. This is all I remember. I am sure of that.”

Jacob Stack, who was present in the captain’s room upon the “Argyll” while they were putting hot towels upon the legs of the injured men, testified (Ap. 198):

“Q. Did you upon the occasion to which you have referred, when the captain of the ‘Argyll’ was in his cabin, hear the captain of the ‘Argyll’ say, ‘I never had such an accident in my life, this is the first time. I was awake in bed and got up and went to the galley to get a cup of coffee and I heard the whistle, and then I went up on the bridge and sung out ‘put your wheel hard a-starboard’?”

A. Yes, sir, that is what he said.”

Aslak Abrahamsen, one of the injured men, testified (Ap. 202) that he sent for the captain of the “Argyll” to see “if he had some medicine that could in some way lessen pain” (as he put it), and then said that the captain came in and stood and looked at him for quite a while and that then the captain said:

“I have been going to sea for 32 years and I never had an accident in all my life.
* * * While I was washing out the cup, I heard one whistle blow and I ran on the bridge as quick as I could and I seen a light a little on our starboard bow, and I told the man at the wheel ‘hard a’starboard’ and then I seen it was too late, and I hooked her up full speed astern.”

In this explanation of Captain Dickson's, not a word is said about *three* whistles. He heard *one* whistle, ran up to the bridge and not until after he had ordered the wheel hard a'starboard were the engines ordered astern; and even then he said nothing about three whistles having been blown to indicate his action in ordering his engines astern. The log book was also silent as to the *three* whistles.

"When collisions at sea take place open to the view of all parties, and become afterwards subjects of litigation, courts look carefully at the first version given of the transaction by the parties concerned, and distrust all additions to, or abstractions from the original representations, particularly when made under oath."

Judge Betts in *Wells v. The Annie Caroline*,
29 F. C. 17,389a.

In *The George Shiras*, 61 Fed. 300, 307 (C. C. A., 3rd Circuit), the court said:

"It is very significant that the revised explanations of the accident are given fully two years after it occurred. The damaging admissions were made on the very day it happened, when all the incidents were fresh, and the causes which operated to produce it would have been perfectly well known and understood."

Statements made by any witness, when the facts must have been fresh in his mind, will discredit his subsequent testimony to the contrary.

Moore on Facts, Secs. 752, 757.

In *The Sea Breeze*, 21 F. C. No. 12,572a, declarations of the master, made at various times, and

inconsistent with his testimony, were shown. The court said:

“The court is well aware that, in admiralty, the admissions of the crews of the respective vessels are not of the most satisfactory and reliable nature; but, in the present instance, they are shown to have been made by an intelligent shipmaster, who was also a part owner of his vessel; and they relate to his own conduct at the time of the disaster.”

And the court used these conflicting admissions to impeach his testimony.

The application of the principle:

“*Falsus in uno, falsus in omnibus*” should be made to the testimony of both McAlpine and Captain Dickson.

CONDITION OF THE “ARGYLL’S” LOG.

The “Argyll” lays great stress upon her claim that the “Gualala” suddenly changed her course and ran across the bows of the “Argyll”. This claim was not made immediately after the collision but was apparently an afterthought upon the part of those responsible for the “Argyll”. When they took time to consider how they could put the blame for the collision upon the “Gualala”, it occurred to them that they might do so in this way. The old “stereotyped excuse”, as some of the courts put it, was not thought of at the time of the collision; nor when the log was written up; nor even the day after, upon their arrival in San Francisco, and

when (Ap. 210), (after consultation with Mr. Tubby, the manager of the marine department, and Captain Ferris, the superintendent), Captain Dickson came hurriedly below to where Captain Lebbens Curtis was making a copy of the log, and waited impatiently for the log so that it might be gone over again and have added to it: "Answered with one blast, gave three blasts, helm hard to port."

As was said in *Pennell v. United States*, 162 Fed. 64, at p. 70:

"It may further be said, with reference to the omission in the steamer's log in this case, that the log is very complete and full, and the court cannot escape the conclusion that, while the log recites in detail so many things in regard to all the matters relating to the disaster, it would not have been likely to remain silent about so material a circumstance as the fact that the brig was going at an immoderate rate of speed."

Is it conceivable that if the "Gualala" *had* suddenly changed her helm and run squarely across the bows of the "Argyll" neither the mate nor the captain, both of whom were on deck, would have written up their log without mentioning it?

"In every case of collision between ships in which the testimony of one vessel is as unanimous and positive as it is in this, if it nevertheless be in fact false, there is sure to be some physical circumstance, condition of things or occurrence developed in the evidence to refute and discredit the false testimony."

The Lepanto, 50 Fed. 234.

We have more than one physical circumstance, and condition of things here to brand McAlpine's testimony as false, but if *the* cause of the collision was the fact that the "Gualala" ran across the bows of the "Argyll", it is hardly possible that neither Captain Dickson nor McAlpine would have so conspicuously failed to give this as the cause in their narration in the log of how the collision happened.

The court in *The Etruria*, 147 Fed. 216, at p. 217, in somewhat similar circumstances said:

"According to her answer the weather was 'thick and foggy'. After the original entry of the collision was made her log was interlined to show that it was foggy at that time. The absence of such an entry originally is a suspicious circumstance."

In *The Richmond*, 114 Fed. 212, in language that, if the court had commented upon the defense here, instead of lights as there, would fit the circumstances of this case, exactly, said:

"A most significant circumstance, bearing upon the vessel's lights, is the fact that, although the failure of the vessel in this regard is made the chief basis of the steamer's defense, the fact that such lights did not exist was not made record of at the time of the collision, either in the steamer's log, or in the protest made next day. Both the log and the protest utterly fail to make any reference to such conditions, and it is hard to believe that so important an omission would have been made had the lights not been burning. Nothing could have been more material to the steamer, —nothing would have so likely accounted for

the collision, and probably have vindicated the steamer. (Cases cited.) The object of keeping the log was to have a record made at the time of the then existing facts. The Newfoundland, 89 Fed. 510."

The major portion of appellant's brief contains a discussion of the elaborate diagram drawn by Gibbs, under the skilful cross-examination of Mr. Campbell, and a discussion of the expert testimony offered by appellant. The diagram of Gibbs, however, as well as the other diagrams referred to in the brief, were drawn upon a basis of time, courses and distances dependent almost entirely upon estimates. As put by the lower court in its opinion (Ap. 368):

"Much expert testimony was introduced to show that the collision could not have occurred in the manner testified to by Gibbs, but the value of this testimony depends upon the accuracy of estimates of time, courses and distances. Such estimates are of necessity more or less uncertain."

The opinion of the district judge expresses in his language the rule which has been repeatedly followed in the Federal Courts in admiralty cases. One of the earliest of these cases, *The Argus*, Fed. Cas. No. 521, lays down the rule, as follows:

"It is proper to observe, that the estimate or judgment of witnesses, as to the bearings, distances or relative positions of objects on the water looked at in the night time, and particularly when the witnesses are placed on vessels in motion, cannot be considered entitled to confidence as facts. They are little more than con-

jectures, formed in a state of mind and position disabling the witnesses from speaking with any reliable certainty."

In *The Narragansett*, Fed. Cas. No. 10,019, one of the parties attempted to demonstrate, as the appellant did in the case at bar, that the collision could not have happened if the testimony of the witnesses were true. The court, in passing on this, used the following language:

"Various diagrams have been exhibited, and computations of bearings and distances have been made, to demonstrate that the vessels could not have been brought in contact under the relative speed and bearings, if, according to the rule of evidence, greatest credit is given to the outnumbering witnesses on the side of the claimants, in those particulars, in which the two classes differ. I confess I place slender confidence in this description of proof. The inferences from it depend wholly upon the accuracy of the elements on which the computation is made, and a mis-estimate in trivial particulars of the courses, or distances, or speed of the two vessels, would take away all value from the hypotheses and calculations upon which the plans are based."

Again, in *Kelley v. Thompson*, Fed. Cas. No. 4056, the court said:

"Some gentlemen of nautical experience have given it as their opinion, that if the vessels were meeting in the direction and at the distance supposed, and the libelants changed their course as they say they did, the vessels could not have come together if the D. P. had ported her helm. But the value of such an opinion depends upon so nice a calculation of the times, courses and distances that I should not feel safe

in adopting it against the clear weight of the direct testimony of eye witnesses. One of the experts said that a variation of half a point in the course of either schooner would make the difference between clearing and not clearing."

In *The John Craig*, 66 Fed. 596, the court held that in nice calculations, based upon the assumed positions of vessels just before collision, an error of a few feet in regard thereto would destroy the most plausible reasoning.

We are content to submit the case upon the main issues, without attempting to distinguish, which of the experts may have been correct as to the possibility, or impossibility, of the collision under their respective theories as to how the collision actually occurred. There was a collision. The lower court, in the findings of fact made after a careful analysis of the weight of the testimony of the witnesses offered by the respective parties, with full opportunity to judge which of those witnesses should be deemed worthy of belief, concluded that that collision "could not have occurred" but for the negligence of the lookout and deck-officer upon the "Argyll".

We respectfully submit that the decree of the lower court should be affirmed.

Dated, San Francisco,

November 7, 1914.

Respectfully submitted,

IRA S. LILLICK,

L. A. REDMAN,

Proctors for The Gualala Steamship Company.

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

UNION STEAMSHIP COMPANY (a corporation); claimant of the American Steamship "Argyll", her engines, boilers, etc.,

Appellant,

vs.

KONSTANT LATZ,

Appellee.

And Causes No. 2474 and 2516, All Consolidated for Hearing.

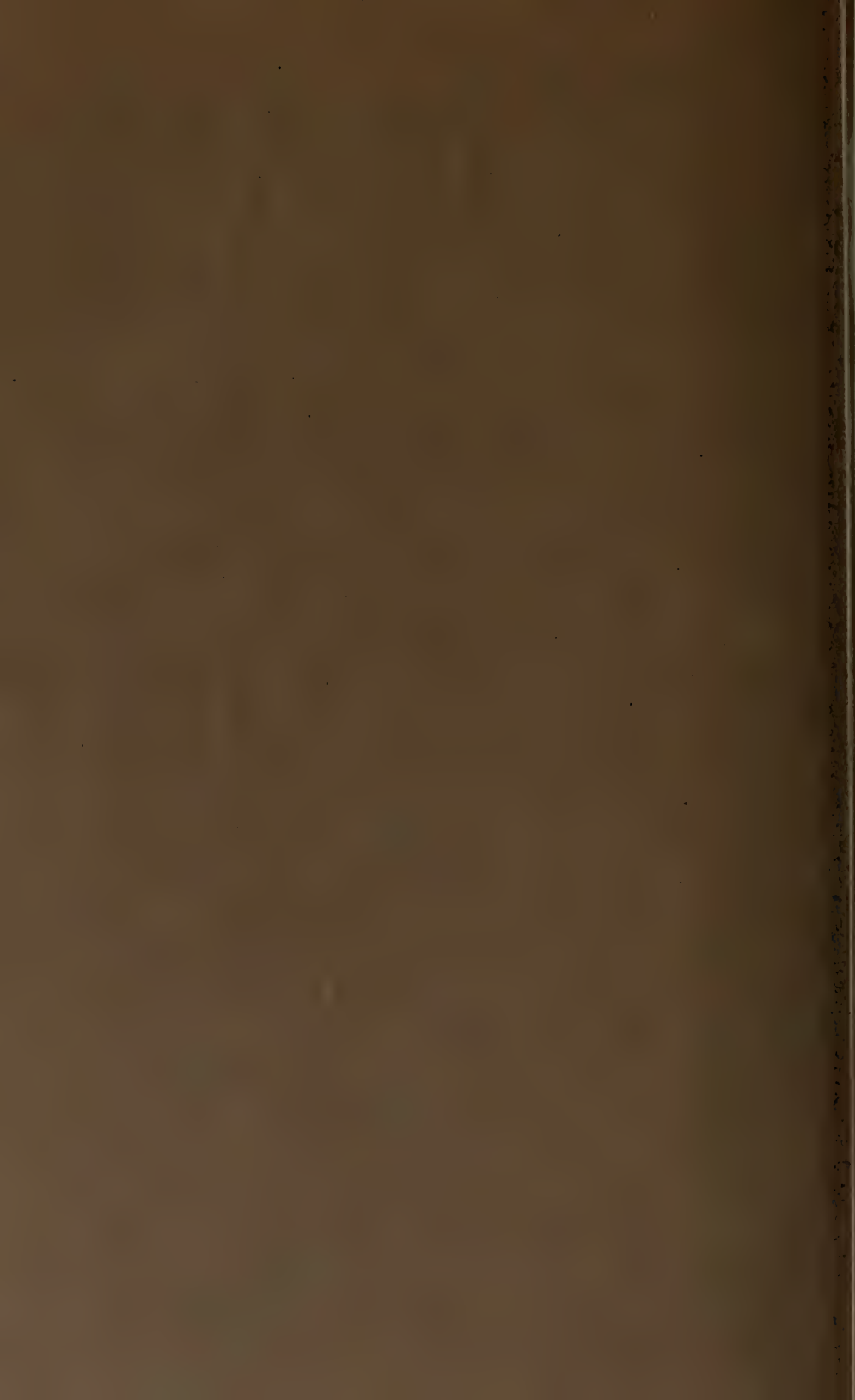
APPELLANT'S PETITION FOR A REHEARING.

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and Petitioner.*

Filed this **Filed** day of June, 1915.

JUN 10 1915
FRANK D. MONCKTON, Clerk.

By **F. D. Monckton,** Deputy Clerk.
Clerk.



IN THE
United States Circuit Court of Appeals

For the Ninth Circuit

UNION STEAMSHIP COMPANY (a corporation), claimant of the American Steamship "Argyll", her engines, boilers, etc.,

Appellant,

vs.

KONSTANT LATZ,

Appellee.

No. 2473

UNION STEAMSHIP COMPANY,
(a corporation), etc.,

Appellant,

vs.

ASLAK ABRAHAMSON,

Appellee.

No. 2474

UNION STEAMSHIP COMPANY
(a corporation), etc.,

Appellant,

vs.

GUALALA STEAMSHIP COMPANY
(a corporation),

Appellee.

Consolidated for Hearing.

No. 2516

**APPELLANT'S PETITION FOR
A REHEARING.**

*To the Honorable William B. Gilbert, Presiding Judge,
and the Associate Judges of the United States Cir-
cuit Court of Appeals for the Ninth Circuit:*

The Union Steamship Company, appellant and petitioner herein, respectfully requests a rehearing in the above causes.

This petition is not interposed for delay. It is presented because we sincerely believe that such manifest errors appear in the opinion of the court in holding the "Argyll" alone at fault as to merit a rehearing. Accordingly, we most respectfully point out that the court erred in holding:

1. *That the only controverted question was whether the primary and causative fault lay with the "Argyll";*
2. *In not, at least, holding that the "Gualala" was guilty of contributory fault in the particulars hereinafter specified.*

I.

The "Gualala's" Fault Was Controverted.

In its opinion, this court said:

"The Gualala is perhaps subject to criticism that she did not sooner stop and reverse, but the primary and causative fault lies with the Argyll, for which she is alone liable. *This being the only controverted question, the decrees in all the cases are affirmed.*" (Italics ours.)

The hearing in this court was, by the settled rule, a trial *de novo*. This was so held by Circuit Judge Ross, speaking for this court, in

The San Rafael, 141 Fed. 270, 275,

wherein he said:

“It is well settled, said the Supreme Court in *Irvine v. The Hesper*, 122 U. S. 256, 266, 7 Sup. Ct. 1177, 30 L. ed. 1175, ‘that an appeal in admiralty from the District Court to the Circuit Court vacates altogether the decree of the District Court, and that the case is tried *de novo* in the Circuit Court.’

* * * The same rule applies here, since this Court now has the jurisdiction of appeals in admiralty from the District Court that formerly appertained to the Circuit Court. *The Sirius*, 54 Fed. 188, 194, 4 C. C. A. 273. The whole of the cases in hand, therefore, were opened by the appeals taken by petitioner and claimants.”

Reid v. Fargo et al., 213 Fed. 771.

Appellant specifically pointed out and discussed in its brief and on the oral argument the errors in the navigation of the “Gualala”. We frankly cannot, therefore, understand how this court could have been led into the error of holding that the only controverted question was the fault of the “Argyll”.

It is true that Mr. Wall in his brief questioned the sufficiency of appellant’s assignment of errors, but on the oral argument we called this to the court’s attention, stating that we understood the rule of practice to be that a trial *de novo* was had in admiralty in this court, and requesting, if the court was of the opinion that the point was well taken and the assignments were insufficient to raise in question the fault of the “Gualala”,

that appellant might have an opportunity to file amended and supplementary assignments for that purpose. To this request the presiding judge assented, but no suggestion has been made in any form by the court that the assignments were insufficient to admit of a full consideration of the conduct of both vessels leading to the collision. If, perchance, this be the ground for the court now holding that the fault of the "Argyll" was the only controverted question, we beg the privilege of filing the required assignments of errors, as we understood the presiding judge to consent to, in order that this court may pass upon what we believe are manifest and indisputable faults on the part of the "Gualala" even granting that the collision happened as the court has held that it did occur.

The faults are so clear from the facts of the collision as reviewed by the court in its opinion that we urge upon the court their consideration, and a rehearing to that end.

II.

The Contributory Fault of the "Gualala".

A. THE "GUALALA'S" LOOKOUT WAS NEGLIGENT IN NOT OBSERVING AND REPORTING THE APPEARANCE OF THE "ARGYLL'S" GREEN LIGHT.

On the court's own version of the collision, the inefficiency of the "Gualala's" lookout is so clear that doubt of it cannot exist. The court finds:

"The Argyll was heading, when first sighted, almost in a direct course for the Gualala. As the Gualala continued to starboard, the Argyll changed

to port, as she was directed to do, and probably swung further in that direction than the officer on the bridge was aware of."

It is undisputed by the parties litigant, and this court does not find to the contrary, that the vessels came together at about thirty degrees from ahead. The lookout of the "Gualala" described it as follows:

"Q. *Do you know at about what sort of an angle she struck?*

A. *Well, about right ahead like, pretty near ahead.*" (Ap. 358-360.)

So that we have this situation: The "Argyll", when heading almost in a direct course for the "Gualala", while the latter was steering S. E., swung to port; the "Gualala" swung to starboard; they eventually collided at an angle of about thirty degrees from ahead when the "Gualala" was heading at least S. S. W. Now, during the time that the "Argyll" was swinging to port, so as to get into a position to make possible the striking of the "Gualala" thirty degrees from ahead, when the latter was heading S. S. W. it is a physical certainty that the "Argyll's" green light was exposed to the "Gualala". Did the lookout on the "Gualala" see it? *Not for a moment!*

We have his own admission of his failure, in these words:

"MR. WALL. *Did you see any green light at any time?*

A. *No, never noticed any green light at all.*

* * * * *

Q. *You could not see her green light at any time?*

A. *I did not notice her green light at any time.*

Q. *Did you ever notice her green light at all?*

A. *No, I never noticed it*" (Ap. 358-360).

Here, then, is this court holding that the collision occurred under circumstances which necessitated the exposure for a considerable period of the "Argyll's" green light to the "Gualala", because she could not have moved from nearly straight ahead when the "Gualala" was steering S. E. to thirty degrees from ahead when the "Gualala" was heading S. S. W., without showing such green light, *and yet at no time did the lookout see the "Argyll's" green light. That certainly establishes beyond all question that the lookout of the "Gualala" was inefficient, for he failed conspicuously to see what he ought to have seen, and what this court necessarily holds must have been visible to him.*

The Colorado, 91 U. S. 692, 699;

The New York, 175 U. S. 187.

If the lookout had seen the green light and reported it to the bridge, and the wrongful change in course by the "Argyll" had thus been noted and acted upon by the "Gualala", as the rule of prudent navigation would have required, *no one can say that the collision might not have been avoided.*

That this court is fully appreciative of the effect of a defective lookout is shown by its quotation from *The Colorado*, 91 U. S. 692, 699, in condemning the "Argyll". But if the "Argyll's" bridge officer was so negligent *in not observing the momentary change of lights* on the "Gualala", and if the lookout of the "Argyll" was likewise so derelict *in not reporting both lights* of the

“Gualala” together, as to merit the condemnation of the “Argyll”, why was not the “Gualala’s” lookout equally negligent *in not seeing and reporting that which this court holds was necessarily in view,—the “Argyll’s” green light?* If the former were negligent in the navigation of the “Argyll”, the latter was likewise at fault in the navigation of the “Gualala”! How can any distinction be made between the effects of the two, so as to say that if the “Argyll’s” green light had been seen and reported by the “Gualala’s” lookout, still the collision would have occurred? *There are no facts presented by any of the witnesses to support such a conclusion.*

By every test, the lookout was defective.

This court said in its opinion:

“The failure of officers whose duties are to keep a lookout to see what they ought to have seen, or to hear what they ought to have heard, where casualty results, is a grievous fault for which the vessel will be rendered liable.”

We respectfully submit that no grounds exist for exempting the “Gualala” from the application of that rule in view of such unmistakable fault of her lookout.

B. THE “GUALALA’S” MATE WAS NEGLIGENT IN NOT OBSERVING THE “ARGYLL’S” GREEN LIGHT BEFORE IT WAS TWO POINTS ON HIS PORT BOW WHEN THE “GUALALA” WAS HEADING S. S. W.

The evidence equally establishes in the same particular, the defective watch kept by the mate, Gibbs, on the “Gualala”. This court says that the “Gualala’s” view

of the situation is the true one; that the "Argyll" was heading almost in a direct course for the "Gualala"; that as the "Gualala" continued to starboard, the "Argyll" changed to port, as she was directed to do, and probably swung further in that direction than the officer on the bridge was aware of. Gibbs says that the "Gualala" was heading S. E. when he saw the "Argyll" (Ap. 262, 280-282); that the "Gualala's" course was changed to starboard, and she was heading S. S. W. *when the "Argyll's" green light was first seen, and that it was then bearing two points on his port bow* (Ap. 265, 290), whereupon, he reversed full speed astern (Ap. 290).

It was a physical impossibility, as we believe will be readily admitted, for the "Argyll" to have altered her course from "almost in a direct course for the 'Gualala'," when the latter was heading S. E., to a position two points on the "Gualala's" port bow, when the "Gualala" was heading S. S. W., *without the "Argyll" exposing her green light to the "Gualala" in making such change. This fact is indisputable for it is capable of a physical demonstration; yet Gibbs saw no green light until it was two opints on his port bow, when the "Gualala" was heading S. S. W.* He thus failed conspicuously to see what the court holds must have been visible. This court held the "Argyll's" bridge officer negligent because he did not see the "Gualala's" *immediate* change in course, both lights together. And yet, the court has made no attempt to distinguish between the two, and has made no reference to this failure of Gibbs.

When Gibbs saw the "Argyll's" green light two points on his port bow, he says he reversed full speed astern, but his vessel still had headway at the time of the collision. Had the lookout reported, or had Gibbs seen, the green light when, on the court's own statement of the collision, it must have first come into view, and had the "Gualala's" danger signal then been blown and her engines reversed and three whistles given indicating that fact, who can say that the collision could not have been prevented? *No one! Positively no one!*

Gibbs' failure to see the green light when it must have first come into view, establishes to a demonstration a defective watch of the most culpable character.

C. THE "GUALALA'S" LOOKOUT WAS NEGLIGENT IN NOT OBSERVING AND REPORTING THE CONVERGING COURSE OF THE "ARGYLL", AND THE MATE, IN NOT BLOWING THE DANGER SIGNAL AND STOPPING THE "GUALALA" ON OBSERVING THE CONVERGING COURSES OF THE TWO VESSELS.

This court said in its opinion:

"It is strange and inexplicable that the Argyll did not discover very much sooner than it did that its course was converging upon that of the Gualala, not diverging from it, starboard to starboard, and at the same time that it should have assented to a signal to pass to port. There was a serious inattention to what ought to have been sooner observed, and if it had been sooner observed, we cannot doubt that the collision would have been avoided. (Italics ours.)"

What about what the "Gualala's" lookout and first officer should have observed as to the converging

lookout's
ance.

courses? *The converging of the "Argyll's" course was as clearly discernible to the "Gualala" as to the "Argyll", and even more so for the "Argyll" carried range lights and the "Gualala" did not. Did the lookout perform his duty by reporting it? No!* Not a word did he report, although he says that he saw the change. If he had, and Gibbs had thus had his attention called to the fact that the "Argyll" was changing her course contrary to the passing signals, and had Gibbs acted as prudent navigation would have required, *for he must then have known that a collision was impending*, he would have blown the danger signal and stopped. But this noted change in course was not reported by the lookout. His own dereliction thus stands confessed, and yet this court condemned the "Argyll" because such converging course was not sooner discovered. *On what ground is the fault of the "Gualala's" lookout to be excused?* We frankly know of no reason for distinguishing the fault of the "Gualala" from that of the "Argyll" in this regard.

Mate's
gence.

Furthermore, is it rational to believe that the "Argyll" could have swung on a converging course from a position right ahead of the "Gualala", when the latter was steering S. E., to a position two points on the "Gualala's" port bow when she was heading S. S. W., *without the mate of the "Gualala" observing the change long before the "Argyll", more than twice as large as the "Gualala", reached the position where Gibbs says she was when he reversed?* Certainly it is not, and even Gibbs does not so contend. He admits that he saw the wrongful change in the "Argyll's" course long before

he reversed, i. e., before he saw the "Argyll's" green light two points on his port bow. He testified:

"Q. In which direction did these range lights change, if you know, as to whether the 'Argyll' was coming upon one course or another?

A. Well, it did not look to me as though she had changed her course, but it appeared that she was not porting her helm at that time; it looked to me as if she had not ported her helm; *it looked to me as though she was coming to starboard*" (Ap. 262).

* * * * *

"Q. From the lights upon the 'Argyll' in your position what, if any, change did the 'Argyll' make in her course from the time you first saw the range lights until the collision?

A. *Well, the way it looked to me, the 'Argyll' put her helm hard a'starboard.*

Q. When?

A. *Well, when she answered this one whistle.*

Q. Then what change did she make in her course after that, if she made any?

A. Then she put her helm hard a'port; and the way I think that happened was this, that the third mate answered that——" (Ap. 264-5).

* * * * *

"Mr. LILLICK. Q. You can state, Mr. Gibbs, what you saw her do and from those lights what she did do.

A. *Well, it appeared to me that when I blowed that one whistle she was swinging to starboard.*

Q. Could you tell whether she had commenced to swing to starboard before you blew that one whistle?

A. No, I think she was on her course at that time.

Q. When did she commence to swing to starboard, if she did?

A. *Shortly after I blew that one blast of the whistle I noticed her range light begin to change, and that is why I ordered the man to put his helm hard a'port'* (Ap. 265-6).

* * * * *

“Q. After you blew your one whistle you ported your helm, and she continued to swing on that port helm?

A. Yes.

Q. You say the ‘Argyll’ answered with one whistle?

A. One whistle.

Q. What did you do next?

A. *Well, I seen the ‘Argyll’s’ range lights changing.*

Q. The range lights changing?

A. *Yes, and I told my man to put his helm to hard a'port.*

Q. How were they changing? How could you tell the range lights were changing?

A. Well, they appeared to me they were changing.

Q. And it was by those range lights that you were judging that she was swinging?

A. Yes.

Q. Which way did you think she was swinging?

A. *Well, I thought she was swinging to—I thought she was swinging a little to starboard.*

Q. Then you at that time ordered your helm to hard a'port?

A. *I still seen that range light, and I ordered him to put his helm hard a'port.*

Q. From that time, from the swinging of the range lights you thought the ‘Argyll’ was swinging to starboard?

A. I thought she was swinging a little to starboard; it appeared that way to me.

Note.—When Gibbs said that the “Argyll” swung to starboard, he meant that she swung to port under a starboard helm.

Q. *How long before the collision was it that you put your helm hard a'port?*

A. *It was about a minute and a half.*

Q. *How long was that after you had first put your helm to port?*

A. *It was about half a minute'' (Ap. 289-290).*

Gibbs then knew that the "Argyll" was turning towards him on a converging course; indeed, he specifically says that *it was the change in the "Argyll's" course which caused him to order his helm hard a'port.* This was a minute and a half before the collision! *Did he blow the danger signal or stop and reverse on observing the "Argyll's" mistake. He did not, but kept the "Gualala" on at full speed, and the next he saw was the "Argyll's" green light two points on his port bow after the "Gualala" had swung six points (67½ degrees—¾ of a right angle) in her course from S. E. to S. S. W.* Then, for the first time, Gibbs reversed, but even in those circumstances did not blow either a danger signal, or the three whistles required by the statutory rule. *If this was not negligent navigation, how can it be characterized?* The court recognized this in its opinion when it said that "the 'Gualala' is perhaps subject to criticism that she did not sooner stop and reverse". He, Gibbs, did stop and reverse on seeing the green light. Then, when the court said that the "Gualala" was subject to criticism that she did not sooner stop and reverse, the court could only have had in mind that Gibbs saw the "Argyll's" error when Gibbs said he did, a minute and a half before the collision when he hard a'ported.

The court held that it was strange and inexplicable that the "Argyll" did not discover much sooner than

she did that her course was converging upon that of the "Gualala". But here is the "Gualala's" mate *confessing that he did observe* the converging course, and *admitting that he did not then stop his ship or give the danger signal*. This court said that "if it (the converging of the 'Argyll's' course upon the 'Gualala's') had been sooner observed (by the 'Argyll'), we cannot doubt that the collision would have been avoided". Is it now going to hold that that *which was not observed* and not acted upon by the "Argyll", but *which was observed* and not acted upon by the "Gualala", condemns the former, and does not condemn the latter? We cannot believe so, for *it is impossible to say that if Gibbs had reversed on seeing the "Argyll's" wrongful change of course, the collision could not have been avoided*.

The collision occurred on a clear night, under conditions by which, according to the view taken by the court, the "Argyll", a vessel more than twice as large as the "Gualala" and slow and unwieldy in her movements, moved from a position nearly ahead of the "Gualala", when the latter was steering S. E., to a position 30 degrees from ahead, while the "Gualala", proceeding at full speed, had changed her course to S. S. W. This required the larger and more cumbersome vessel to travel a greater distance than did the smaller and quicker turning "Gualala", while the latter was altering her heading six points. The maneuver must have brought the green light of the "Argyll" into plain view long before she was two points on the "Gualala's" port bow when heading S. S. W., and must have shown, as Gibbs admits that it did to him, that the

“Argyll” was turning against the exchanged passing whistles on a converging course, which, if continued, made the danger of collision imminent. Yet, in these circumstances, the lookout of the “Gualala” never saw the “Argyll’s” green light, and never observed and reported the converging course. The mate never saw the green light of the “Argyll” until it was two points on the “Gualala’s” port bow when she had changed her course to S. S. W. from S. E.; the mate saw the error of the “Argyll” and her swinging to port towards the “Gualala” on a converging course, and not to starboard away from the “Gualala” on a diverging course, as the exchanged passing signals required, but did not stop his vessel or blow the danger signal as the rules required. Confessedly, then, the “Gualala” was guilty of contributory fault of the clearest character, and merits the application of the rules laid down by the Supreme Court in *The Colorado*, *The New York*, and *The Oregon*, cited by this court.

We cannot, perhaps, in the view which this court has taken of the maneuvers of the vessels which precipitated the collision, more pertinently point out the errors in navigation than to quote the following excerpt from the recent case of

Yang-Tsze Ins. Ass’n et al. v. Furness, Withy & Co. et al., 215 Fed. 859, 864:

“The loss of property for which a recovery is sought was due to a collision on the high seas, in broad daylight and in clear weather, and with no other vessels about to embarrass or interfere with navigation. The two vessels involved were steamers, and therefore could be maneuvered more easily than any other kind of vessels. They were in plain

sight of each other when miles apart. They nevertheless came into collision with such force that one of them sank in a few hours, carrying down with her the entire cargo. It is difficult to see how it all happened unless both vessels were in fault and failed to exercise reasonable care. Plain common sense constrains one to such a conclusion. To exonerate either of them under such conditions can be justified only if upon the closest scrutiny of the navigation of each vessel it can be discovered that one of them was free from all culpable blame."

The closest scrutiny does not show that the "Gualala" was free from all culpable blame, but, on the contrary, her fault is clear.

We respectfully submit, therefore, that for the reasons specified a rehearing should be granted.

Dated, San Francisco,

June 15, 1915.

EDWARD J. McCUTCHEN,

IRA A. CAMPBELL,

McCUTCHEN, OLNEY & WILLARD,

*Proctors for Appellant
and Petitioner.*

CERTIFICATE OF COUNSEL.

I hereby certify that I am of counsel for appellant and petitioner in the above entitled cause and that in my judgment the foregoing petition for a rehearing is well founded in point of law as well as in fact, and that said petition is not interposed for delay.

IRA A. CAMPBELL,

*Of Counsel for Appellant
and Petitioner.*

United States
Circuit Court of Appeals

For the Ninth Circuit.

UNION STEAMSHIP COMPANY, a Corpora-
tion, Claimant of the American Steamship
"ARGYLL," Her Engines, Boilers, etc.,
Appellant,

VS.

ASLAK ABRAHAMSON,
Appellee.

Apostles.

Upon Appeal from the United States District Court
for the Northern District of California,
First Division.

Filed

SEP 21 1914

F. D. Monckton,
Clerk.

United States
Circuit Court of Appeals

For the Ninth Circuit.

UNION STEAMSHIP COMPANY, a Corporation,
Claimant of the American Steamship
"ARGYLL," Her Engines, Boilers, etc.,

Appellant,

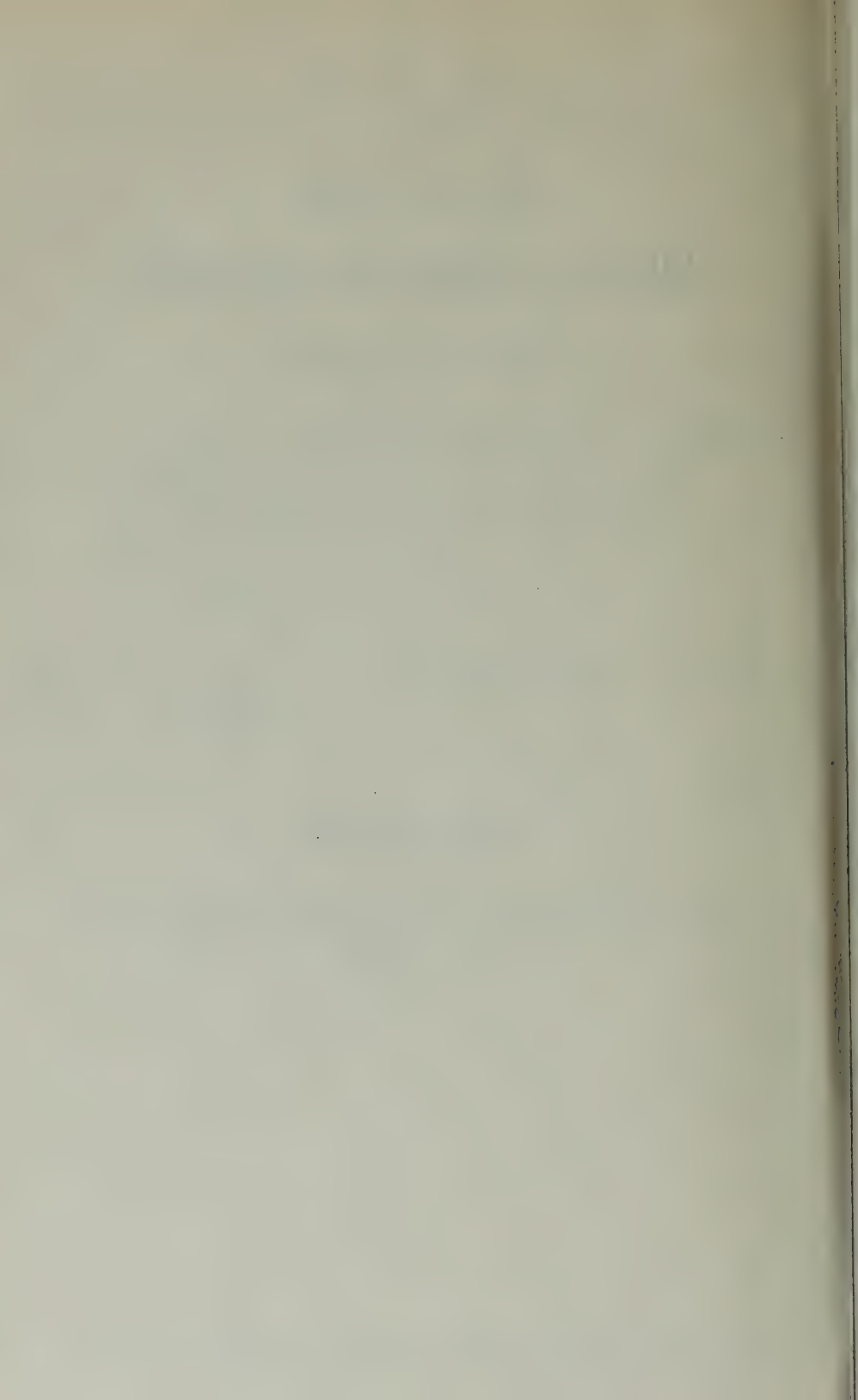
VS.

ASLAK ABRAHAMSON,

Appellee.

Apostles.

Upon Appeal from the United States District Court
for the Northern District of California,
First Division.



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States, for the
Northern District of California, First Division.*

IN ADMIRALTY—No. 15,458.

ASLAK ABRAHAMSON,

Libellant,

vs.

The American Steamship "ARGYLL," and the
GUALALA STEAMSHIP COMPANY, a
Corporation,

Libelees.

UNION STEAMSHIP COMPANY,

Claimant and Respondent.

Praecepta for Apostles on Appeal.

To the Clerk of the Above-entitled Court:

Please prepare transcript of record in this cause to be filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, upon the appeal heretofore perfected in this court, and include in said transcript the following pleadings, proceedings, and papers on file, to wit:

1. All those papers required by Section 1 of Paragraph 1 of Rule 4 of the Rules of Admiralty of the United States Circuit Court of Appeals for the Ninth Circuit.

2. All the pleadings in said cause, and all the exhibits annexed thereto. [1*]

3. All the testimony and other proofs adduced in the cause, including the testimony taken at the trial, all depositions taken by either party and admitted

*Page-number appearing at foot of page of original certified Record.

in evidence, and all exhibits introduced by either party, said exhibits to be sent up as original exhibits.

4. The opinion and decision of the Court.
5. The final decree and notice of appeal.
6. The assignment of errors.

IRA A. CAMPBELL,

McCUTCHEN, OLNEY & WILLARD,

Proctors for Claimant and Appellant.

[Endorsed]: Filed Aug. 25, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [2]

Statement of Clerk District Court.

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

No. 15,458.

ASLAK ABRAHAMSEN,

Libelant,

vs.

American Steamship "ARGYLE," Her Boilers, Engines, Machinery, Tackle, Apparel, and Other Furniture,

and

THE GUALALA STEAMSHIP COMPANY, a
Corporation,

Respondents. [3]

PARTIES.

LIBELANT: Aslak Abrahamsen,

RESPONDENTS: The American Steamship "Argyle," and The Gualala Steamship Company, a Corporation.

CLAIMANT: Union Steamship Company.

PROCTORS

for

LIBELANT: S. T. Hogevoll, Esquire, San Francisco, Calif.

RESPONDENT: Ira S. Lillick, Esquire, San Francisco, Calif.

CLAIMANT: Messrs. McCutchen, Olney & Willard, and Ira A. Campbell, Esquire, San Francisco, Cal. [4]

PROCEEDINGS.

1913.

August 29. Filed verified Libel for personal injuries for \$14,685.00. Issued Monition for attachment of the steamer "Argyll," which said monition was afterwards on the 21st day of September, 1913, returned and filed with the following return of the United States Marshal endorsed thereon:

"I hereby certify and return that I received the within Writ at San Francisco, California, on August 29th, 1913, and herewith return the same for the reason that a bond was

Union Steamship Company

given for the release of said Steamship without seizure being made.

C. T. ELLIOTT,

United States Marshal.

By George H. Burnham,

Chief Office Deputy."

Issued Citation for appearance of Respondent, which Citation was afterwards on the 2d day of September, 1913, returned and filed with the following return of the United States Marshal attached thereto:
[5]

1913.

"I have served this Writ personally by copy on the Gualala Steamship Company, a corporation, by handing to and leaving a copy hereof with, Fred. Linderman, the President of the Gualala Steamship Company, a corporation, at San Francisco, Calif., on the 30th day of August, 1913, this 30th day of August, A. D. 1913.

C. T. ELLIOTT,

U. S. Marshal.

By T. F. Kiernan,

Office Deputy Marshal."

Filed Claim of Union Steamship Company.

Filed stipulation for release of American Steamship "Argyle," in the sum

of \$10,000.00, with the National Surety Company, as Surety. [6]

1913.

September 16. The Court this day ordered that this cause be consolidated for trial with causes entitled Gualala Steamship Company vs. American Steamship "Argyle," Her Engines, etc., No. 15,327; A. W. Beadle vs. American Steamship "Argyle," Her Engines, etc., No. 15,329; and Konstant Latz vs. The American Steamship "Argyle," Her Engines, etc., and the Gualala Steamship Company, a corporation, No. 15,335.

23. Filed Answer of Gualala Steamship Company, a corporation.

26. Filed Answer of Union Steamship Company, owner of the American Steamship "Argyle."

October 15. The above-entitled causes as consolidated this day came on for hearing in the District Court of the United States, for the Northern District of California, at the City and County of San Francisco, before the Honorable M. T. Dooling, Judge, and were continued until October 16th, 1913, for further hearing, on which day said causes

were submitted to the Court for decision. [7]

1913.

November. 18. The causes as heretofore consolidated were, by leave of the Court first obtained, reopened for further hearing, before the Hon. M. T. Dooling, Judge of said Court, and were resubmitted to the Court for decision.

1914.

May 6. The Court this day rendered a written opinion which was filed in cause No. 15,327, and in which it is ordered that a decree be entered in favor of the Libelant for damages, in the sum of \$3,621.00 and costs.

7. Filed decree.

July 3. Filed Notice of Appeal.
Filed Bond on Appeal in the aggregate sum of \$4,250.00, with National Surety Company, as surety.

September. 2. Filed Assignment of Errors. [8]

*In the District Court of the United States, in and for
the Northern District of California.*

No. —.

ASLAK ABRAHAMSON,

Libellant,

vs.

The American Steamship "ARGYLL," and the
GUALALA STEAMSHIP COMPANY, a
Corporation,

Libelees.

Libel for Damages for Personal Injuries.

To the Honorable District Court of the United States
in and for the Northern District of California.

The libel of Aslak Abrahamson, late seaman on the
steamship "Gualala," against the steamship "Ar-
gyll," her boilers, engines, machinery, tackle, ap-
parel, and other furniture, and against the Gualala
Steamship Company, a corporation, owner of the
said steamship "Gualala," in a cause of action for
damages for personal injuries, and loss of personal
effects and belongings, civil and maritime, alleges as
follows, to wit:

1.

That the said libelee, the said Gualala Steamship
Company, now is and was at all the times herein set
out a corporation, organized and existing under and
by virtue of the laws of the state of California [9]

2.

That on the fifteenth day of October, 1912, the said

Gualala Steamship Company was the owner of, in control of, and operated a certain steamship, named the "Gualala." That the said "Gualala" had a tonnage of two hundred and twenty tons registered. Plaintiff alleges on information and belief that the Union Steamship Company, a corporation, now is, and was at the time of the injury hereinafter set out, the owner of the said steamship "Argyll." That the said "Argyll" has a tonnage of about two thousand seven hundred and fifty-three tons registered.

3.

That the said "Gualala" was at said time commanded by one S. Martinusen, as captain, and by one Harry D. Gibbs as second mate. The said "Argyll" was at said time commanded by one R. Dickson as captain, and by one Douglas A. McAlpine as third mate.

4.

That on said date about three o'clock A. M. in a clear and calm night, the two said ships collided in the open ocean on the coast of California approximately twenty-five miles southeasterly from Point Arena in the county of Mendocino in said State, and about seven miles from the coast of said state.

5.

That the said "Gualala" was at the time of the said collision traveling at the rate of about seven miles an hour, and was going in a southeasterly direction or nearly so. The said "Argyll" was at the said time going at the [10] rate of about eight miles an hour, and was going nearly northwest one fourth west.

6.

That the said "Argyll" carried two mast lights, commonly called range lights, and the said "Gualala" carried one mast light. Both said ships carried a red light on the port side and a green light on the starboard side.

7.

That the said ships at said time were meeting nearly end-on and were in such a position that a collision would happen in the event that neither ship would turn. The said Gibbs who at the said time had charge of the said "Gualala" was negligent in this, that in a clear and calm night he saw the mast lights on the said "Argyll" and the said lights being nearly in line, and by reason thereof the said Gibbs knew that the said "Argyll" was coming directly towards the said "Gualala," and that there was risk of collision, nevertheless, he, the said Gibbs, negligently omitted to alter the course of the said "Gualala," and he negligently omitted to blow any whistle until the said ships were about 1000 feet apart, at which place he blew one whistle which was answered by the said "Argyll" blowing one whistle.

8.

That the said collision and the injury to this libellant hereinafter described were caused directly by reason of that the said Gibbs in violation of section 4233 of the Revised Statutes of the United States negligently omitted to port the helm on the said "Gualala," and negligently omitted to blow any whistle, and he refused to turn [11] out of the way for the said "Argyll," and he knew in time to

avoid the collision that the said "Argyll" was also negligent, and he knew that a collision would happen unless he ported the helm on the said "Gualala."

9.

That said McAlpine, who at said time had charge of the said "Argyll," was negligent in this, that although he, the said McAlpine, saw the mast light of the said "Gualala" and the red port light while the ships being at least one half of a mile apart, and by the use of ordinary care he could also have seen the green light of the said "Gualala" and by seeing the two lights, the said McAlpine could have determined that the said ships were meeting end-on or nearly end-on, and by reason thereof a collision might follow unless the course were altered, but nevertheless the said McAlpine, in violation of Section 4233 of the Revised Statutes of the United States negligently omitted to port the helm of the said "Argyll," and he refused to turn the said "Argyll" out of the way for the said "Gualala," although he saw in time to avoid the collision that the said "Gualala" was coming directly towards him, and that the said Gibbs was negligent and that a collision would happen unless he turned the said "Argyll" away from the course of the said "Gualala." That the said collision and injury to this libelant were caused directly by the said concurrent negligence of the said persons then and there in charge of the said ships.

10.

That said "Argyll" then and there collided with

[12] and struck the said "Gualala" about fifteen feet from the stem, and made a wreck of the said "Gualala."

11.

That at said time the said "Gualala" was a California ship, and owned by a California corporation, with its principal place of business in the City and County of San Francisco. That the said Gibbs was at said time the second mate on the said "Gualala" and was a superior servant of this libelant.

12.

The said libelees by the said negligent collision then and there injured this libelant as follows, to wit:

The two bones below the right knee were broken, and the right knee was made stiff permanently. The right foot was crushed, and all the bones therein dislocated, and all the toes on the said foot were broken. The injury to the said foot and knee makes it necessary for libelant to limp, and plaintiff is informed and believes that he will be limping the remainder of his life. Libelant was compelled to remain in the hospital for three months and two weeks, and while in said hospital by reason of the said injuries gangrene developed in his right foot, causing intense pain, and by reason of said gangrene it became necessary to have three toes on the libelant's right foot amputated.

The left foot was bruised and the tendons therein dislocated to such an extent that the libelant is still suffering pain in the said left foot. [13]

13.

This libelant was at the time of the injury a strong and healthy man, of the age of twenty-eight years, and had an expectancy of life of 36.75 years. He was earning and capable of earning the sum of one hundred dollars per month by his occupation as a seaman. Libelant avers that he can no more follow the said occupation.

Libelant further avers that he lost the sum of twenty-seven dollars in money at said time, and all his personal belongings of the value of ninety-four dollars.

That by reason of the said injuries to his person the said libelant has been damaged in the sum of fourteen thousand and five hundred and sixty-five dollars, and in the further sum of one hundred twenty-one dollars as damages for his personal belongings and for money as herein set out.

14.

That the said steamship "Argyle" is now in the Bay of San Francisco, and within the jurisdiction of this Honorable Court.

That all and singular the premises are true and within the admiralty jurisdiction of the United States Court.

15.

Wherefore the libelant prays:

That process in due form of law according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction may issue against the said steamship "Argyll," her boilers, machinery, tackle, apparel, and furniture, and all persons hav-

ing or pretending to have any right, title, or interest in said steamship, may be cited [14] to appear and answer under oath all and singular the matters aforesaid. That a monition may also in due form issue against the said Gualala Steamship Company, a corporation, and that said company may be cited to appear and answer under oath all and singular the matters aforesaid. That this Honorable Court will be pleased to decree this libelant such sum in damages for his personal injuries and for the loss of his money and personal belongings as may be just and equitable.

16.

That the said Gualala Steamship Company may be decreed to pay the same, and that the said steamship "Argyll," her boilers, tackle, and apparel, and other furniture may be condemned and sold to pay the same.

That said libelant may have such further relief in the premises as in law and justice he may be entitled to receive.

S. T. HOGEVOLL,

Proctor for Libelant. [15]

United States of America,
Northern District of Montana,
City and County of San Francisco,—ss.

Aslak Abrahamson, being first duly sworn, on oath deposes and says:

That he is the libelant in the foregoing libel, that he has read the same and knows the contents thereof, and that said libel is true of his own knowledge, except as to the matters therein alleged on his infor-

mation and belief and as to those matters he believes it to be true.

ASLAK ABRAHAMSEN.

Subscribed and sworn to before me this 29 day of August, 1913.

CHARLES FRANCEE,
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Aug. 29, 1913. W. B. Maling, Clerk.
By Francis Krull, Deputy Clerk. [16]

In the District Court of the United States, for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,458.

ASLAK ABRAHAMSON,

Libellant,

vs.

The American Steamship "ARGYLL," and the
GUALALA STEAMSHIP COMPANY, a
Corporation,

Respondents.

UNION STEAMSHIP COMPANY,

Claimant.

Claim of Union Steamship Company.

To the Honorable WM. C. VAN FLEET and the
Honorable M. T. DOOLING, Judges of the
United States District Court for the Northern
District of California:

The claim of Union Steamship Company to the
steamship "Argyll," her tackle, apparel and furni-

ture now in the custody of the Marshal of the United States for the said Northern District of California, at the suit of Aslak Abrahamson alleges:

That it is the true and *bona fide* owner of the said steamship "Argyll," her tackle, apparel and furniture, and that no other person is the owner thereof.
[17]

WHEREFORE, this claimant prays that this Honorable Court will be pleased to decree a restitution of the same to it, and otherwise, right and justice to administer in the premises.

UNION STEAMSHIP COMPANY.

By MAX DYER,

Secretary.

IRA A. CAMPBELL,

McCUTCHEM, OLNEY & WILLARD,

Proctors for Claimant.

MAX DYER.

Subscribed and sworn to before me this 29th day of August, 1913.

[Seal]

LYLE S. MORRIS,

Deputy Clerk, United States District Court. [18]

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

IN ADMIRALTY—No. 15,458.

ASLAK ABRAHAMSON,

Libelant,

vs.

The American Steamship "ARGYLL," and the
GUALALA STEAMSHIP COMPANY, a
Corporation,

Libelee.

Answer of the Gualala Steamship Company.

To the Honorable MAURICE T. DOOLING, Judge
of the District Court of the United States, for
the Northern District of California, First Division:

The answer of The Gualala Steamship Company, a
corporation, to the libel of Aslak Abrahamson, respectfully represents:

I.

Answering unto the first, second, third, fourth, fifth and sixth articles in said libel, the said libelee admits the same.

II.

Answering unto the seventh article in said libel, said libelee is informed and believes, and upon such information and belief admits that the said ships shortly prior to said collision were meeting nearly end-on, and upon the same ground denies that said ships at said time, or at any other time, save and

except a moment before the collision, were in such a position that a collision would happen in the event that neither [19] ship would turn, and denies that the said Gibbs was negligent at said time, or any other time, either in that the said Gibbs omitted to alter the course of the said "Gualala," or in that he omitted to blow any whistle until the said ships were about one thousand feet, or any other distance, apart, and denies that said Gibbs was negligent at said time, or at any other time, or at all, either in altering or omitting to alter the course of said "Gualala," or in blowing or omitting to blow any whistle upon the said "Gualala"; and upon the same ground denies that said Gibbs, or any other officer or member of the crew of said "Gualala," was negligent in any act or omission at any time prior to said collision, or at all, and denies that said Gibbs blew or caused to be blown any whistle on board the said "Gualala" when said vessels were about one thousand feet apart, or any other distance apart, except as hereinafter stated, and alleges the fact to be that said Gibbs, when said vessels were about a half a mile apart, with the masthead or range lights, and only the red or port light of each vessel visible from the other, caused the whistle of the said steam schooner "Gualala" to be blown once, and immediately after hearing an answering signal of one blast from the whistle of the said steamship "Argyll," ported the helm of the said "Gualala."

III.

Answering unto the eighth article in said libel, said libelee is informed and believes, and upon such

information and belief denies that the said collision, or the said alleged injury to said libelant described in said libel was, or were, caused directly, or indirectly, or at all, by reason of any violation upon the part of said Gibbs or any part or portion of Section 4233, or any other section, of the Revised Statutes [20] of the United States, and upon said ground denies that said Gibbs negligently, or otherwise, omitted to port, or otherwise change, the helm upon the said "Gualala," and upon the same ground denies that said Gibbs negligently, or otherwise, blew, or omitted to blow, any whistle upon the said steamer "Gualala," and, upon the same ground, denies that said Gibbs refused, or failed, to turn out of the way for the said "Argyll," and upon the same ground denies that said Gibbs knew that the said "Argyll" was negligent in time to avoid the collision, or at any other time, except immediately prior to the said collision when the said vessels were so close together as to make a collision unavoidable, and; upon the same ground, denies that said Gibbs knew at any time prior to the time when the helm of said steamer "Gualala" was reported that a collision would happen unless said helm was so ported.

IV.

Answering unto the ninth article in said libel, libelee admits that the said McAlpine, who at said time had charge of the said steamer "Argyll," was negligent, and that he, the said McAlpine, saw the lights of the said "Gualala," as alleged in said article, or by the use of ordinary care could have seen said lights, and that said McAlpine negligently

omitted to port the helm of said steamship "Argyll," but denies upon its information and belief that said McAlpine saw, either in time to avoid the collision or at any other time, or at all, that the said Gibbs was negligent, and denies that said Gibbs was negligent either at said time or at any other time, or at all, and upon the same ground denies that the said collision, and said injury, or said collision, or said injury to said libelant, were, or was, caused directly, or indirectly, or at [21] all, either by the said concurrent negligence of the said persons then and there in charge of the said ships, or by reason of the or any, negligence of said Gibbs, or any other person, or persons, in charge of the said steamship "Gualala," and upon the same ground alleges that said collision and said injury to said libelant were, and each of them was, caused by the negligence of the persons in charge of the said steamship "Argyll" at the time of, and prior to said collision.

V.

Answering unto the tenth and eleventh articles in said libel, the said libelee admits the same.

VI.

Answering unto the twelfth and thirteenth articles in said libel, the said libelee alleges that it is ignorant as to the matters therein alleged, so that it can neither admit nor deny the same, wherefore it calls for proof thereof, if relevant.

VII.

Answering unto the fourteenth article in said libel, the said libelee denies that all or singular, or any, of the premises alleged in said libel are true, except as

hereinbefore specifically admitted, but admits that the same are within the admiralty jurisdiction of the United States and of this Honorable Court, and that said steamship "Argyll" was at the time of filing said libel in the Bay of San Francisco.

Further answering said libel, said libelee alleges :

I.

That heretofore, and on or about, to wit, the time and place mentioned in said libel, and while proceeding on a southwesterly [22] course, said steamship "Gualala" was run into and so badly damaged by said steamship "Argyll" that said steamship "Gualala" immediately filled with water and turned turtle; that at and for about twenty minutes prior to the time of said collision the weather was clear; that at and prior to the time of the said collision there was no wind and the sea was smooth; that said steamship "Gualala" was in every respect seaworthy and fully and completely equipped and manned by the full complement of officers and crew, and at the time of and prior to said collision was displaying all lights and giving all signals required by law, and was being carefully and cautiously navigated in accordance with the rules and regulations governing the navigation of steam vessels.

II.

That said collision was due to no act of fault, or neglect, on the part of the officers and crew of said steamship "Gualala," but was solely due to the careless and negligent navigation of the steamship "Argyll," and particularly so in that when said vessels were about half a mile apart, with the masthead

or range lights, and only the red or port light of each vessel visible from the other, said steamship "Gualala" blew one blast of her whistle and ported her helm, and said steamship "Argyll" answered said blast by blowing one blast of her whistle, but starboarded her helm instead of putting it to port, and that immediately thereafter, notwithstanding that the engines of the "Gualala" were reversed and run full speed astern, said steamship "Argyll" ran into and sank said steamship "Gualala."

III.

That all and singular the premises are true and within [23] the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, libelee prays that the above-entitled action may be dismissed as to libelee, The Gualala Steamship Company, with its costs.

L. A. REDMAN and
IRA S. LILLICK,

Proctors for Gualala Steamship Company.

State of California,

City and County of San Francisco,—ss.

Robt. J. Tyson, being first duly sworn, on oath deposes and says: That he is the Secretary of the Gualala Steamship Company, a corporation, libelee herein; that he has read the foregoing answer, knows the contents thereof and believes the same to be true.

ROBT. J. TYSON.

Subscribed and sworn to before me this 22d day of September, 1913.

[Seal]

M. D. COLLINS,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Sep. 23, 1914. W. B. Maling, Clerk. By Francis Krull, Deputy Clerk. [24]

In the United States District Court for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,458.

ASLAK ABRAHAMSEN,

Libelant,

vs.

The American Steamship "ARGYLL," and the
GUALALA STEAMSHIP COMPANY, a
Corporation,

Respondent.

UNION STEAMSHIP COMPANY,

Claimant.

Answer of Union Steamship Company.

To the Honorable M. T. DOOLING, Judge of the United States District Court for the Northern District of California:

The answer of Union Steamship Company, a corporation, claimant, to the libel of Aslak Abrahamson against the steamship "Argyll," her tackle, apparel, etc., in a cause of damages for personal injury, civil and maritime, admits, denies and alleges, as follows:

I.

Claimant admits the allegations of Article I of said libel. [25]

II.

Claimant admits the allegations of Article II of said libel.

III.

Claimant admits the allegations of Article III of said libel.

IV.

Claimant admits the allegations of Article IV of said libel.

V.

Claimant admits the allegations of Article V of said libel.

VI.

Claimant admits the allegations of Article VI of said libel.

VII.

Answering unto the allegations of Article VII of said libel, claimant denies that said steamships at said times were meeting nearly end-on, and denies that they were in such a position that a collision would happen in the event that neither ship would turn. Claimant admits that Gibbs was at said time in charge of the "Gualala," but denies that he was negligent in omitting to alter the course of the "Gualala," or that he negligently omitted to blow any whistles until the said ships were about 1,000 feet apart. Claimant admits that the night was clear and calm, and that said Gibbs saw the mast light of said "Argyll," but denies that he saw said light nearly

in line, and denies that by reason of either of the facts alleged in said article, or for any [26] other reason, said Gibbs knew that the "Argyll" was coming directly toward the "Gualala," and denies that there was risk of collision; and in that behalf claimant alleges that said collision was caused by said Gibbs altering the course of said "Gualala" to starboard and attempting to cross the bow of said "Argyll" while said vessels were approaching each other starboard to starboard.

VIII.

Answering unto the allegations of Article VIII of said libel, claimant denies that said collision and the injury to the libelant described in said libel, if such injuries were suffered, were caused directly by reason of said Gibbs negligently omitting to port the helm of the "Gualala," or in negligently omitting to blow any whistle, or in refusing to turn out of the way of said "Argyll," and denies that said Gibbs knew in time to avoid the collision, or at any other time, or at all, that said "Argyll" was also negligent, and denies that said "Argyll" was negligent in any manner whatever, and denies that said Gibbs knew that the collision would happen unless he ported the helm on the said "Gualala," and in that behalf claimant alleges that the negligence which precipitated the collision was the negligent porting of the "Gualala's" helm at the time and under the conditions herein alleged.

IX.

Answering unto the allegations of Article IX, claimant denies that the said McAlpine, who at the

time had charge of the said "Argyll," was negligent in omitting to port the helm of said "Argyll," or in refusing to turn the [27] said "Argyll" out of the way for the said "Gualala." Claimant admits that said McAlpine saw the mast light of said "Gualala," but denies that he saw the red port light while the ships were a half a mile apart, and admits that he could by the use of ordinary care have seen, and that he did see, the green light of the "Gualala." Claimant denies that said McAlpine could see the two lights of said "Gualala" until a moment before the collision, and for that reason denies that the said McAlpine could have determined that the ships were meeting end-on, or nearly end-on, and that by reason thereof a collision might follow unless the courses were altered, and in that behalf claimant denies that said McAlpine, in violation of Sec. 4233 of the Revised Statutes of the United States, or of any other section of the Revised Statutes of the United States, or of any other statute, negligently omitted to port the helm on the said "Argyll," or refused to turn the said "Argyll" out of the way of said "Gualala." Claimant denies that said McAlpine saw said "Gualala" coming directly toward him, and denies that he could have turned said "Argyll" away from the course of said "Gualala" so as to avoid such collision after the same became imminent. Claimant denies that said collision and the injury to libellant, if he suffered any, were caused directly by the alleged concurrent negligence of said persons in charge of said ships.

X.

Answering unto the allegations of Article X of said

libel, claimant admits that said "Argyll" collided with and struck the said "Gualala" about eleven feet from her stem and made a wreck of said "Gualala," but denies that [28] the said collision was in accordance with the facts alleged in said libel.

XI.

Answering unto the allegations of Article XI of said libel, claimant admits that at the said time the said "Gualala" was a California ship and owned by a California corporation with its principal place of business in the City and County of San Francisco, State of California, and admits that the said Gibbs was at the said time the second mate on the said "Gualala," but denies that he was a superior servant of this libelant, and in that behalf alleges that he was a fellow servant of libelant.

XII.

Answering unto the allegations of Article XII of said libel, claimant denies that said libelee, steamship "Argyll," or the Union Steamship Company the owner thereof, by the said negligent collision, then and there injured the libelant as alleged in said article, and denies that said collision was caused by any negligence on the part of said steamship "Argyll," its officers or crew, and denies that said libelant was injured by reason of any negligence on the part of said steamship "Argyll," her officers or crew. As to the remaining allegations of said article, claimant has no knowledge or information sufficient to form a belief as to the truth of falsity thereof, and placing its denial on that ground, denies each and every part thereof, and demands that strict proof of

the same be made. [29]

XIII.

Answering unto the allegations of Article XIII of said libel, claimant has no knowledge or information sufficient to enable it to form a belief as to the truth or falsity thereof, and placing its denial on that ground, denies each and every part thereof, and demands that strict proof of the same be made. Claimant specifically denies, however, that libelant has been damaged in the sum of \$14,065, and in the further sum of \$120 for his personal belongings and for money as in said libel alleged.

XIV.

Claimant admits that at the time of the filing of said libel said steamship "Argyll" was in the bay of San Francisco, and within the jurisdiction of this Honorable Court.

Claimant denies that all and singular the premises are true, but admits that they are within the admiralty maritime jurisdiction of the United States.

Further answering unto the allegations of said libel, claimant alleges:

I.

That while proceedings on a N. W. $\frac{1}{2}$ W. course at a point approximately 25 miles southeast of Point Arena, the steamship "Argyll" came into collision with the steamer "Gualala," striking the latter on her port bow approximately 11 feet abaft her stem; that the sea was smooth and the night clear, and said vessels approached [30] each other on practically opposite courses, starboard to starboard, the masthead light and green light of the "Gualala" having been

first observed by those in charge of the navigation of the "Argyll" at about a point to a point and a half on the latter's starboard bow when the vessels were approaching one and one half miles apart; that said vessels continued to approach, green light to green light, until they were within two or three ships' lengths apart, when the "Gualala" suddenly blew a single blast on her whistle and ported her helm, showing both running lights, and then her red light alone to the "Argyll," and started to cross the course of the latter; that upon such alteration of course on the part of the "Gualala," the officer in charge of the "Argyll," seeing that collision could only be avoided by quickly swinging the "Argyll's" head to starboard, ported her helm, and blew a single blast on her whistle to advise the "Gualala" of such maneuver, and then immediately reversed full speed astern on her engines and gave the required signal of three blasts to the "Gualala"; but despite every effort of the "Argyll" to avoid said collision, the two vessels came together, striking practically head-on.

II.

That said steamship "Argyll" was in all respects seaworthy, fully manned, equipped and supplied, and said collision was due to no negligence, fault or error on the part of said steamship "Argyll," her officers or crew, but was solely caused by the aforesaid negligence of said steamship "Gualala" in attempting, without cause, to cross [31] the bow of the "Argyll" at a time which made collision inevitable.

III.

That all and singular the premises are true and

within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, claimant prays that the above-entitled action may be dismissed with costs.

IRA A. CAMPBELL,

McCUTCHEN, OLNEY & WILLARD,

Proctors for Claimant. [32]

State of California,

City and County of San Francisco,—ss.

W. G. Tubby, being first duly sworn, deposes and says:

That he is the president of the Union Steamship Company, a corporation, claimant herein; that he has read the foregoing answer, knows the contents thereof, and believes the same to be true.

G. W. TUBBY.

Subscribed and sworn to before me this 25th day of September, 1913.

FLORA HALL,

Notary Public in and for the City and County of San Francisco, State of California.

Service of the within Answer and receipt of a copy is hereby admitted this 25th day of September, 1913.

Proctor for Libellant.

[Endorsed]: Filed Sep. 26, 1913. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [33]

**[Minutes of Court—September 16, 1913—Order
Consolidating Causes.]**

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 16th day of September, in the year of our Lord one thousand nine hundred and thirteen. PRESENT: The Honorable M. T. DOOLING, Judge.

No. 15,458.

ASLAK ABRAHAMSEN

vs.

The Am. Steamship "ARGYLE," etc., et al.

**MINUTES — ORDER CONSOLIDATING
CAUSES.**

The U. S. Marshal having made return to the monition issued herein that "I hereby certify and return that I received the within writ at San Francisco, California, on August 29th, 1913, and herewith return the same for the reason that a bond was given for the release of said steamship without seizure being made,"—

On motion of S. T. HogevoU, Esqr., proclamation was duly made for all persons having anything to say to appear and answer the libel herein, and on motion of Joe McKeon, Esqr., by the Court ordered that claimant of S. S. "Argyle" have ten days to answer the said libel. On motion of Ira S. Lillick, Esqr., Gualala SS. Co., granted 5 days to answer

said libel. Further ordered that this cause be and the same is hereby [34] consolidated with causes numbered 15,327, 15,329, 15,335, respectively, for all further proceedings to be had. [35]

[Minutes of Court—October 15, 1913—Trial.]

At a stated term of the District Court of the United States of America for the Northern District of California First Division, held at the courtroom thereof, in the City and County of San Francisco, on Wednesday, the 15th day of October, in the year of our Lord one thousand nine hundred and thirteen. PRESENT: The Honorable M. T. DOOLING, Judge.

#15,327, 15,335, 15,458, and 15,329.

THE GUALALA S. S. CO. et al.

vs.

The Am. S. S. "ARGYLE," etc.

MINUTES OF TRIAL.

These causes as consolidated for trial, this day came on for hearing. Ira S. Lillick, Esqr., and L. A. Redman, Esqr., appearing for libelant, The Gualala S. S. Co., F. R. Wall, Esqr., for libelant, K. Latz, S. T. Hogevoell, Esqr., for libelant A. Abrahamsen. Mr. Lillick stated cause and called Fred. Linderman, who was duly sworn and examined as a witness on behalf of the libelant, the Gualala S. S. Co., and read and introduced in evidence depositions taken on behalf of said libelant before a United States Commissioner, and called Louis d'Curtoni and Mar-

tin Kalnin, who were each duly sworn and examined as witnesses on behalf of libelant. Libelant introduced certain exhibits which were marked Libelant's Exhibits 1, 2, and 3, respectively.

Mr. Campbell called D. S. McAlpine, who was duly sworn and examined for claimant and introduced in evidence certain exhibits which were marked Claimant's Exhibits "A" and "B," respectively. The further hearing was thereupon continued until tomorrow. [36]

[Minutes of Court—October 16, 1913—Trial.]

At a stated term of the District Court of the United States of America for the Northern District of California First Division, held at the courtroom thereof, in the City and County of San Francisco, on Thursday, the 16th day of October, in the year of our Lord one thousand nine hundred and thirteen. PRESENT: The Honorable M. T. DOOLING, Judge.

#15,327, 15,329, 15,335, 15,458.

"ARGYLE."

MINUTES OF TRIAL.

The further hearing of these causes as consolidated was resumed. Mr. Campbell called Richard Dixon, who was duly sworn and examined on behalf of claimant. Mr. Hogevoll called Thos. W. Connolley, who was duly sworn and examined on behalf of libelant Abrahamsen. Mr. Campbell called John Hansen, Andrew Forbosen and Benjamin Sanford, George Curtis, James Dickey, A. F. Pillsbury, David Dickey,

Frank E. Ferris, who were each duly sworn and examined as witnesses on behalf of claimant. Mr. Hogevoll called Aslak Abrahamsen, who was duly sworn and examined in his own behalf. Mr. Wall called K. Latz, who was duly sworn and examined in his own behalf. Mr. Lillick called John H. Rinder and Jacob Stack, who were each duly sworn and examined on behalf of libelant. The Gualala S. S. Co., in rebuttal. Aslak Abrahamsen was also recalled. Mr. Campbell recalled Richard Dixon for further examination. The causes were then submitted to the Court for decision upon briefs to be filed in 10, 10 and 5 days. Claimant introduced exhibits marked "C," "D" and "E." Libelant Abrahamsen introduced an exhibit which was marked "A." [37]

[Minutes of Court—November 18, 1913—Trial.]

At a stated term of the District Court of the United States of America for the Northern District of California First Division, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 18th day of November, in the year of our Lord one thousand nine hundred and thirteen. PRESENT: The Honorable M. T. DOOLING, Judge.

#15,327, 15,335, 15,548, 15,329.

"ARGYLE" and "GUALALA."

MINUTES—FURTHER HEARING.

These causes as consolidated this day came on for further hearing. Ira S. Lillick, Esqr., F. R. Wall,

Esqr., and Ira A. Campbell, Esqr., appearing. Mr. Lillick called L. Curtis, who was duly sworn and examined. The following exhibits were introduced in evidence. "Beaddle's Ex. marked 4, and Claimant's Exhibit marked "F." The causes were then submitted on briefs to be filed in 10, 10 and 5 days.
[38]

**Opinion and Order for Entry of Decree in Favor of
Libelant, etc.**

*In the District Court of the United States, in and
for the Northern District of California, First
Division.*

IN ADMIRALTY—No. 15,327.

GUALALA STEAMSHIP COMPANY, a Corpo-
ration,

Libelant,

vs.

The Steamer "ARGYLE," Her Engines, Boilers,
etc.,

Respondent.

The UNION STEAMSHIP COMPANY, a Corpo-
ration,

Claimant.

No. 15,329.

A. W. BEADLE,

Libelant,

vs.

The Steamer "ARGYLE," etc.,

Respondent.

The UNION STEAMSHIP COMPANY, a Corporation,

Claimant.

No. 15,335.

KONSTANT LATZ,

Libelant,

vs.

The American Steamship "ARGYLE," and the
GUALALA STEAMSHIP COMPANY, a
Corporation,

Respondent.

The UNION STEAMSHIP COMPANY, a Corporation,

Claimant. [39]

No. 15,458.

ASLAK ABRAHAMSEN,

Libelant,

vs.

The American Steamship "ARGYLE," and the
GUALALA STEAMSHIP COMPANY, a
Corporation,

Respondent.

The UNION STEAMSHIP COMPANY, a Corporation,

Claimant.

IRA S. LILLICK, Esq., Proctor for Gualala Steamship Company, a Corporation, and A. W. Beadle, Libelants.

F. R. WALL, Esq., Proctor for Konstant Latz, Libelant.

S. T. HOGEVOLL, Esq., Proctor for Aslak Abrahamsen, Libelant.

IRA A. CAMPBELL, Esq., McCUTCHEN, OLNEY & WILLARD, Proctors for Claimant.

These cases arise out of an accident in which two vessels propelled by steam, under full control and having the whole Pacific Ocean in which to maneuver, collided on a clear night, when the lights of each were easily discernible to the other while they were yet miles apart. As is usual in such cases, with each vessel endeavoring to throw the blame upon the other, the testimony is quite voluminous and very conflicting, and I cannot find the requisite time to review it in this decision. From established facts, however, I am of the opinion that the "Argyle" must [40] be held responsible for the collision for the following reasons:

I. For inefficiency of the lookout in not reporting when the "Gualala's" red light and her green light were visible at the same time, and in not reporting when he lost her green light and picked up her red light alone.

II. For negligence on the part of McAlpine, the deck officer, in not observing the "Gualala's" course because of his failure to note when her red light and her green light were visible together, and when her

green light disappeared from view; because of his failure to observe her red light until warned by her whistle; and because of the fact that when the "Gualala's" lights were first sighted he contented himself with directing the quartermaster "not to let her come any closer," apparently paying no further attention to her until warned by her whistle when it was too late to avoid a collision.

The log of the chief officer of the "Argyle" shows that seven minutes elapsed from the time the lookout reported the "Gualala's" light until the blowing of her whistle. At what period of this interval it should have been apparent to the navigator of the "Argyle" that the "Gualala" was on a crossing course upon the "Argyle's" starboard side cannot now be determined, but it is clear that it should have been known to him earlier than it was, and at least at the time when both lights were visible to the lookout, and not reported, and at a time when, if McAlpine were watching, he would have seen both lights together, the green light disappear, and the red alone remain in [41] view. Had these things been observed, earlier precautions could have been taken by the "Argyle" to avoid the collision, which McAlpine declares was inevitable when the warning whistle of the "Gualala" called his attention to her course and proximity. Much expert testimony was introduced to show that the collision could not have occurred in the manner testified to by Gibbs, but the value of this testimony depends upon the accuracy of estimates of time, courses and distances. Such estimates are of necessity more or less uncertain. With

a full appreciation of the seriousness of my conclusion to the "Argyle," I am nevertheless convinced that had the lookout and the deck officer on that vessel been as attentive to their duties as the occasion required, the collision could not have occurred.

A decree will be entered accordingly establishing the liability of the "Argyle," and referring the cause to the Commissioner to ascertain and report the damage suffered by libelants A. W. Beadle and Gualala Steamship Company. As to libelant Aslak Abrahamsen, a decree will be entered awarding him damages in the sum of \$3,621.00. As to libelant Konstant Latz, a decree will be entered awarding him damages in the sum of \$3,500.00.

Each libelant will recover costs.

May 6th, 1914.

M. T. DOOLING,
Judge.

[Endorsed]: Filed May 6, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [42]

*In the District Court of the United States, for the
Northern District of California, First Division.*

IN ADMIRALTY—No. 15,458.

ASLAK ABRAHAMSON,

Libelant,

vs.

The American Steamship "ARGYLE," and the
GUALALA STEAMSHIP COMPANY, a
Corporation,

Respondent.

THE UNION STEAMSHIP COMPANY, a Corporation,

Claimant.

Final Decree.

This case having been heard on the pleadings and proofs and submitted upon the arguments by the proctors for the respective parties, and due deliberation being had in the premises, it is hereby ordered, adjudged and decreed that said steamer "Argyle" was solely at fault in causing said collision and that claimant, The Union Steamship Company, a corporation, is liable to libelant for the damages suffered by him in said collision;

And it is further ordered, adjudged and decreed by the Court that the libelant, Aslak Abrahamson, recover the sum of Three Thousand Five Hundred (3,500) Dollars as damages for injuries to his person, and the further sum of One Hundred Twenty-one (121) Dollars as damages for loss of personal belongings and money suffered by reason of the matters alleged [43] in the libel herein, with costs and interest at the rate of seven (7) per cent per annum from the 7th day of May, 1914, the date of the decree, and that said steamer "Argyle" be condemned therefore;

And it is hereby further ordered, adjudged and decreed that The Union Steamship Company, a corporation, and National Surety Company of New York, a corporation, the stipulators for value on the part of the claimant herein, cause the engagement of their said stipulation to be performed, or show cause within four days after the date hereof, or on

the first day of jurisdiction thereafter, why execution should not issue against their goods, chattels and lands for the amount of this decree with interest thereon according to their stipulation.

Done in open court this 7th day of May, A. D. 1914.

M. T. DOOLING,

Judge of said Court.

[Endorsed]: Filed, entered May 7, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.
[44]

In the United States District Court, Northern District of California, First Division.

IN ADMIRALTY—No. 15,458.

ASLAK ABRAHAMSON,

Libelant,

vs.

The American Steamship "ARGYLL," and the
GUALALA STEAMSHIP COMPANY, a
Corporation,

Respondent.

UNION STEAMSHIP COMPANY,

Claimant.

Notice of Appeal.

To the Clerk of the Above-entitled Court, and to the
Libelant, and to F. R. Wall, His Proctor.

YOU AND EACH OF YOU WILL PLEASE
HEREBY TAKE NOTICE that the Union Steamship Company, a corporation, claimant and respondent herein, hereby appeals from the final decree made

and entered herein in this cause on the 7th day of May, 1914, to the next United States Circuit Court of Appeals for the Ninth Circuit to be holden in and for said circuit at the City and County of San Francisco, State of California.

Dated: July 3d, 1914.

IRA A. CAMPBELL,

McCUTCHEN, OLNEY & WILLARD,

Proctors for Respondent and Claimant. [45]

Service of the within notice of appeal and receipt of a copy is hereby admitted this 3d day of July, 1914.

S. T. HOGEVOLL,

Proctor for Libellant.

[Endorsed]: Filed Jul. 3, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [46]

In the District Court of the United States, for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,458.

ASLAK ABRAHAMSEN,

Libellant,

vs.

The American Steamship "ARGYLL," and the
GUALALA STEAMSHIP COMPANY, a
Corporation,

Libelees.

UNION STEAMSHIP COMPANY,

Claimant and Respondent.

Assignment of Errors.

Now, comes Union Steamship Company, claimant and appellant herein, and says that in the record, opinion, decision and final decree in said cause there is manifest and material error, and said appellant now makes, files and presents the following assignment of errors, on which it relies, to wit:

1. That the District Court erred in rendering the decree herein of date the 7th day of May, 1914, against the steamship "Argyll."

2. That the District Court erred in holding and deciding that the said steamship "Argyll" was in any way at fault in the collision with the steamship "Gualala."

3. That the District Court erred in holding and deciding that the said steamship "Argyll" was in fault for inefficiency [47] of the lookout in not reporting when the "Gualala's" red light and her green light were visible at the same time, and in not reporting when he lost her green light and picked up her red light alone.

4. That the District Court erred in holding and deciding that the said steamship "Argyll" was in fault because of negligence on the part of McAlpine, the deck officer, in not observing the "Gualala's" course, because of his failure to note when her red light and her green light were visible together and when her green light disappeared from view.

5. That the District Court erred in holding and deciding that the said steamship "Argyll" was in fault because of McAlpine's failure in observing the

“Gualala’s” red light until warned by her whistle.

6. That the District Court erred in holding and deciding that the said steamship “Argyll” was in fault because of the fact that when the “Gualala’s” light was first sighted, McAlpine contented himself with directing the quartermaster not to let her come any closer.

7. That the District Court erred in holding that seven minutes elapsed from the time the lookout reported the “Gualala’s” light until the blowing of her whistle.

8. That the District Court erred in holding and deciding that the lookout and deck officer of said steamship “Argyll” were inattentive to their duties.

9. That the District Court erred in allowing libellant excessive damages.

10. That the District Court erred in not holding the steamship “Gualala” solely in fault for the collision between it and the said steamship “Argyll.”
[48]

In order that the foregoing assignment of errors may be and appear of record, said appellant files and presents the same and prays that such disposition be made thereof as is in accordance with the law and the statutes of the United States in such cases made and provided, and said appellant prays a reversal of the decree herein heretofore made and entered in the above cause and appealed from.

Dated: September 2d, 1914.

IRA A. CAMPBELL,

McCUTCHEN, OLNEY & WILLARD,

Proctors for Claimant and Appellant.

Receipt of a copy of the within assignment of errors is hereby admitted this 2d day of September, 1914.

S. T. HOGEVOLL,
Proctor for Libelant, A. Abrahamsen.

[Endorsed]: Filed Sep. 2, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [49]

*In the District Court of the United States, for the
Northern District of California, First Division.*

IN ADMIRALTY—No. 15,458.

ASLAK ABRAHAMSEN,

Libelant,

vs.

The American Steamship "ARGYLL," and the
GUALALA STEAMSHIP COMPANY, a
Corporation,

Libelees,

UNION STEAMSHIP COMPANY,

Claimant and Respondent.

Bond on Appeal and Staying Execution.

KNOW ALL MEN BY THESE PRESENTS:
That we, the Union Steamship Company, a corporation, owner and claimant of the S. S. "Argyll," her tackle, etc., as principal, and National Surety Co., a corporation organized and existing under and by virtue of the laws of the State of New York, and having its home office at New York City, and lawfully doing business in the State of California, as surety, are held and firmly bound unto Aslak Abrahamson,

libelant, in the above-entitled cause in the sum of Two Hundred and Fifty (250) Dollars, and in the further sum of Four Thousand (4,000) Dollars, to be paid to said libelant, his successors [50] or assigns, for the payment of which sums, and each of them, well and truly to be made, we bind ourselves, and each of us, and our respective successors, jointly and severally, by these presents.

SEALED WITH OUR SEAL and dated this 2d day of July, 1914.

WHEREAS, the American S. S. "Argyll," her tackle, etc., by the Union Steamship Company, owner and claimant of said vessel, and the Union Steamship Company, claimant and respondent in said cause, have appealed to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the decree of the United States District Court for the Northern District of California, made and entered in said cause on the 7th day of May, 1914, against said respondent steamship "Argyll," her tackle, apparel and furniture, etc., and said claimant, for the principal sum of Three Thousand Six Hundred and Twenty-one (3,621) Dollars, and Forty-five (45) Dollars costs; and

WHEREAS, said Union Steamship Company, owner and claimant, as aforesaid, desire during the progress of said appeal to stay the execution of said decree of said District Court;

NOW, THEREFORE, the condition of the above obligation is such that if the above-named claimant and respondent, the Union Steamship Company, shall prosecute said appeal to effect and pay all costs, if

said appeal is not sustained, and shall abide by and perform whatever decree may be rendered by the United States Circuit Court of Appeals for the Ninth Circuit in said cause, or on the mandate of [51] said United States Circuit Court of Appeals by said District Court below, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

UNION STEAMSHIP COMPANY,
[Seal] By W. A. STEWART, President,
Principal.

NATIONAL SURETY COMPANY,
[Seal] By CHAS. SEYLER, Jr.,
Attorney in Fact,
Surety.

The foregoing bond is hereby approved as to form and amount and sufficiency of surety.

L. T. HOGEVOLL,
Proctor for Libelant.

The foregoing cost and supersedeas bond is hereby allowed and approved this 6th day of July, 1914, and the same may operate as a stay of execution in said cause pending the determination of said appeal.

M. T. DOOLING,
District Judge. [51½]

AFFIDAVIT AND ACKNOWLEDGMENT BY
SURETY COMPANY.

State of California,
County of Los Angeles,—ss.

On this 2d day of July, A. D. 1914, before me personally came Chas. Seyler, Jr., known to me to be

the attorney in fact of the National Surety Company, the corporation described in and which executed the within bond as a surety thereon, and who, being duly sworn, did depose and say that he signed his name thereto by order and authority of the Board of Directors of said company, and that he affixed its corporate seal thereto by like order and authority.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, the day and year first above written.

[Seal]

HAZEL JONES,

Notary Public in and for Los Angeles County.

[Endorsed]: Filed Jul. 6, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [52]

*In the District Court of the United States, for the
Northern District of California, First Division.*

IN ADMIRALTY—No. 15,458.

ASLAK ABRAHAMSON,

Libelant,

vs.

The American Steamship "ARGYLL," and the
GUALALA STEAMSHIP COMPANY, a
Corporation,

Libelees.

UNION STEAMSHIP COMPANY,

Claimant and Respondent.

**Stipulation and Order as to Testimony, etc., Adduced
at Hearings in Consolidated Causes.**

IT IS HEREBY STIPULATED AND AGREED
that all testimony and other proofs adduced, includ-

ing the testimony taken at the trial, all depositions taken and admitted in evidence, and all exhibits introduced in any of the causes consolidated for trial with the above-entitled cause, or with which said cause was consolidated, may be considered for all purposes as having been heard and considered in this cause, including the purpose of hearing and decision of this cause on appeal, and that said cause may be consolidated in the United States Circuit Court of Appeals with any of the causes with which it was [53] consolidated in the above-entitled court.

Dated: August 31st, 1914.

S. T. HOGEVOLL,
Proctor for Libelant.

IRA A. CAMPBELL,
McCUTCHEN, OLNEY & WILLARD,
Proctors for Claimant and Respondent.

It is so ordered by the court.

Dated: August 31st, 1914.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Aug. 31, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [54]

*In the District Court of the United States, for the
Northern District of California, First Division.*

IN ADMIRALTY—No. 15,458.

ASLAK ABRAHAMSON,

Libelant,

vs.

The American Steamship "ARGYLL," and the
GUALALA STEAMSHIP COMPANY, a
Corporation,

Libelees.

UNION STEAMSHIP COMPANY,

Claimant and Respondent.

**Stipulation and Order Extending Time to File
Apostles on Appeal.**

IT IS HEREBY STIPULATED AND
AGREED, that the time for printing the record and
filing and docketing this cause on appeal in the
United States Circuit Court of Appeals for the Ninth
Circuit may be extended to and including the 31st
day of August, 1914.

Dated: July 30th, 1914.

S. T. HOGEVOLL,

Proctor for Libelant.

IRA A. CAMPBELL,

McCUTCHEN, OLNEY & WILLARD,

Proctors for Claimant and Respondent.

It is so ordered.

WM. C. VAN FLEET,

Judge. [55]

Pursuant to the foregoing stipulation, it is hereby ordered that the time for printing the record and docketing this cause on appeal in the United States Circuit Court of Appeals for the Ninth Circuit be and the same is hereby enlarged and extended to and including the 31st day of August, 1914.

Dated: July —, 1914.

District Judge.

[Endorsed]: Filed Jul. 31, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [56]

In the District Court of the United States, for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,458.

ASLAK ABRAHAMSON,

Libelant,

vs.

The American Steamship "ARGYLL," and the
GUALALA STEAMSHIP COMPANY, a
Corporation,

Libelees.

UNION STEAMSHIP COMPANY,

Claimant and Respondent.

**Stipulation and Order Extending Time to File
Apostles on Appeal.**

IT IS HEREBY STIPULATED AND AGREED that the time for printing the record and filing and docketing this cause on appeal in the United States Circuit Court of Appeals for the Ninth

Circuit may be extended to and including the 4th day of September, A. D. 1914.

Dated: San Francisco, California, August 31, 1914.

S. T. HOGEVOLL,

Proctor for Libelant, A. Abrahamsen.

IRA A. CAMPBELL.

McCUTCHEN, OLNEY & WILLARD,

Proctors for Claimant and Respondent. [57]

Pursuant to the foregoing stipulation, it is hereby ordered that the time for printing the record and docketing this cause on appeal in the United States Circuit Court of Appeals for the Ninth Circuit be and the same is hereby enlarged and extended to and including the 4th day of September, 1914.

Dated: San Francisco, Cal., August 31st, 1914.

M. T. DOOLING,

District Judge.

[Endorsed]: Filed Aug. 31, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [58]

**Certificate of Clerk U. S. District Court to Apostles
on Appeal.**

I, Walter B. Maling, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and hereunto annexed 58 pages, numbered from 1 to 58, inclusive, contain a full, true, and correct transcript of the records and proceedings as the same now remain on file and of record in the Clerk's Office of said District Court, in the cause entitled Aslak Abrahamson vs. The American Steamship "Argyle," etc., and

Gualala Steamship Company, a Corp., Number 15,458, and which said apostles on appeal are made up pursuant to and in accordance with subdivision 1 of Section 1 of Rule 4 of the "Rules in Admiralty, United States Circuit Court of Appeals for the Ninth Circuit," as well as "Praeceptum for Apostles on Appeal" (copy of which is embodied herein), and the instructions of proctors for claimant and appellant herein.

I further certify that the costs of preparing and certifying the foregoing Apostles on Appeal is the sum of Twenty-six Dollars and Twenty Cents (\$26.-20), and that the same has been paid to me by the proctors for appellant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 4th day of September, A. D. 1914.

[Seal]

WALTER B. MALING,

Clerk.

By C. W. Calbreath,

Deputy Clerk. [59]

[Endorsed]: No. 2474. United States Circuit Court of Appeals for the Ninth Circuit. Union Steamship Company, a Corporation, Claimant of the American Steamship "Argyll," her Engines, Boilers, etc., Appellant, vs. Aslak Abrahamson, Appellee.

Apostles. Upon Appeal from the United States District Court for the Northern District of California, First Division.

Received and filed September 3, 1914.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk. 6



